



Permitted clearing of native vegetation

Low risk-based pathway permit applicant's kit: March 2014

In Victoria, a planning permit is required to remove, destroy or lop native vegetation.

Landholders wishing to remove native vegetation need to apply for a permit from their local council.

The *Permitted clearing of native vegetation – Biodiversity assessment guidelines - Sept 2013* (the Guidelines) are incorporated into all Victorian planning schemes and guide the assessment of biodiversity consideration of the permitted clearing regulations. The Guidelines set out how impacts on Victoria's biodiversity are assessed when an application for a permit to remove native vegetation is considered.

Purpose of this kit

This kit assists landholders prepare an application for a permit to remove native vegetation and meet the permit application requirements set out in the Clause 52.16 and Clause 52.17 of Victorian planning schemes and the Guidelines.

By following the steps outlined in this kit an applicant can:

- confirm if a permit is required to remove native vegetation
- classify the native vegetation proposed to be removed
- use the online tool to help prepare an application in the low risk-based pathway
- provide any additional application information required under Clause 52.16 or Clause 52.17.

The kit includes an application form that should be completed and lodged with the local council as part of a planning permit application.

What this kit does not cover

This kit assists landholders to prepare permit applications which will be assessed in the low risk-based pathway, as outlined in Clause 52.17. This kit must not be used to prepare applications in the moderate and high risk-based pathway. See the [Meeting the moderate and high risk-based pathway applications requirements](#) information sheet for details on how to prepare these applications.

Applicants may be required to provide additional information to meet other requirements of the relevant planning scheme. This may include:

- relevant planning overlays.

Applicants should contact their local council to determine if additional information is required.

Requirements for using this kit

To prepare an application using this kit an applicant needs to;

- know the extent of native vegetation to be removed
- have access to the internet and a printer.

How to use this kit

This kit has five steps. Each step must be completed to meet the application requirements for the low risk-based pathway under Clause 52.16 and Clause 52.17. The steps are summarised below and a more detailed explanation is provided later. If all application requirements are not completed, the application cannot be assessed, in which case you will be asked to supply the required information, which will cause unnecessary delays.

Step 1: Confirm that a permit is required to remove native vegetation

A permit is required to remove, destroy or lop native vegetation unless:

- the removal is the result of a use that is not regulated by the planning scheme
- the planning scheme provides for the removal of native vegetation without a permit.

This step assists applicants determine if a permit is required to remove native vegetation.

Step 2: Classify the native vegetation to be removed

The Guidelines classify native vegetation into two categories:

- remnant patches
- scattered trees.

This step assists applicants classify the native vegetation proposed to be removed.

Step 3: Use the Native Vegetation Information Management (NVIM) tool to determine the risk-based pathway and download report

All applications to remove native vegetation will be assessed using one of three risk-based pathways:

- low
- moderate
- high.

The risk-based pathway of the application is determined by the amount of native vegetation proposed to be removed (in hectares or number of trees) and its location in the landscape.

The NVIM tool has been developed to assist landholders to determine the risk-based pathway of their application. If the risk-based pathway of the application is low the NVIM tool also determines the offset requirements. The NVIM tool generates a report that must be included in the application for a permit to remove native vegetation. This report meets some of the applicants requirements.

If the application is in the moderate or high risk-based pathway, there are additional application requirements and this applicant's kit cannot be used to prepare these applications.

This step determines the risk-based pathway of the application and if low risk-based, calculates the offset requirements.

Step 4: Provide any additional information required by Clause 52.16 or Clause 52.17

Additional information is required to meet the application requirements of Clause 52.16 and Clause 52.17. This includes:

- photographs of the native vegetation to be removed
- a defensible (bushfire) space statement (if applicable)
- property vegetation plan (if applicable)
- details of previous clearing (if applicable)
- topographical information
- Native Vegetation Precinct Plan (NVPP) statement (if applicable).

This step assists applicants determine what additional information is required.

Step 5: Complete the application form and lodge the application

Once Steps 1 to 4 in the Application Form (see Appendix A) have been completed, it must be lodged with an application for a permit to remove native vegetation with the relevant local council.

This step ensures that all required application information has been prepared.

Steps for completing an application for a permit to remove native vegetation

This section provides a detailed explanation of the five steps of preparing a low risk-based pathway permit application.

Step 1 – Is a permit required to remove native vegetation?

A permit is required to remove, destroy or lop native vegetation, unless the proposed vegetation removal falls under one of the following:

- there is an exemption to the requirement for a permit in the planning scheme
- the native vegetation is listed in a schedule to clause 52.17 in the relevant planning scheme.
- the removal of native vegetation is the result of the continuation of a lawful existing use for the purposes of Section 6(3) of the Planning and Environment Act 1987.

In these circumstances, a permit will not be required to remove native vegetation. More detail is provided below.

If you are unsure if a permit is required for the native vegetation you propose to remove, you should contact your local council.

Exemption to the requirement for a permit to remove native vegetation

Tables of exemptions are set out in Clauses 52.16 and 52.17 of planning schemes. These exemptions allow landowners to remove some native vegetation in certain circumstances without the need for a permit. In addition to the two clauses above, specific bushfire protection exemptions are listed in Clause 52.48. If the removal is covered by an exemption under Clause 52.48, no planning permit is required under Clause 52.16 or Clause 52.17.

Most exemptions are narrowly defined to prevent the removal of excessive amounts of native vegetation without a permit. Before removing native vegetation, you should confirm the activity you are undertaking is eligible for an exemption, and is consistent with any conditions specific to the exemption.

Activities which are exempt from the requirement for a permit in specific circumstances include:

- removing wood for personal use
- mowing or slashing of grass for maintenance
- lopping and pruning for maintenance
- removing planted vegetation
- removing regrowth less than 10 years old
- removing native vegetation on a site less than 0.4 hectare in area
- removing native vegetation for bushfire protection.

See the relevant exemptions table in the planning scheme for a full list of exemptions and details of how they apply:

- Clause 52.16-4 Table of Exemptions
- Clause 52.17-7 Table of Exemptions
- Clause 52.48.

Planning schemes can be viewed at: <http://planningschemes.dpcd.vic.gov.au/>

Appendix B provides further guidance on the applicability of exemptions.

Schedules to Clause 52.17

A planning permit is not required for the removal of native vegetation that has been specified in a schedule of 52.17 in the local planning scheme. This may include plants that are not indigenous to the local area and have become environmental weeds or areas that have been assessed under other processes such as an Environmental Effects Statement.

Planning schemes can be viewed at: <http://planningschemes.dpcd.vic.gov.au/>

Existing use rights

The *Planning and Environment Act 1987* provides for the continuation of an existing use that was occurring legally at the time of a change in the planning scheme, without the need for a permit. In some cases existing use rights may mean that a planning permit is not required for the removal of native vegetation. Existing use rights need to be considered on a case-by-case basis.

In summary existing use rights for the removal of native vegetation can only be established if:

- the use has been continuous for the last 15 years, without any breaks of 2 or more years.
- the removal of native vegetation is integral to the use.

A planning permit is not required if there is an existing use right to remove native vegetation. Appendix C provides further detail on the applicability of existing use rights.

Contact your local council for further guidance about the applicability of existing use rights.

If your proposed vegetation removal does not fall under one of the above situations, you will require a permit to remove native vegetation go to Step 2.

Step 2 - Classify the native vegetation to be removed

Definition of native vegetation

Native vegetation is defined in the Victoria Planning Provisions as 'plants that are indigenous to Victoria, including trees, shrubs, herbs and grasses'. A planning permit is required to remove native plants that meet this definition, unless an exemption applies (see step 1).

The *Permitted clearing of native vegetation – Biodiversity assessment guidelines - Sept 2013* (the Guidelines) classify native vegetation in two categories; remnant patches and scattered trees. If the native vegetation to be removed is not a remnant patch or a scattered tree (per the definitions below), the Guidelines are not applied when considering whether or not to grant a permit to remove the native vegetation, however a permit is still required from council.

A **remnant patch** is either:

- an area of vegetation where at least 25 per cent of the total perennial understorey plant cover is native
- any area with three or more native canopy trees where the canopy foliage cover is at least 20 per cent of the area.

A **scattered tree** is a native canopy tree that does not form part of a remnant patch.

A **canopy tree** is a mature tree that is greater than three metres in height and is normally found in the upper layer of the relevant vegetation type.

Foliage cover is determined by the proportion of the ground that is shaded by vegetation foliage when lit from directly above.

Distinguishing between remnant patches and scattered trees

You are required to determine if the native vegetation proposed to be removed is classified as a remnant patch or scattered tree. This information will be used in Step 3 to prepare your application to remove native vegetation. Your application may contain both remnant patches and scattered trees.

Native canopy trees are considered scattered trees when they are spread out (not in contact with each other) and the vegetation around them is not native. Scattered trees most commonly occur in paddocks that have been cropped or sown with exotic pastures.

Native canopy trees that are in groups of three or more, or are surrounded by native vegetation are considered to be part of a remnant patch.

Examples of vegetation that does not meet the definition in the Guidelines

Examples of vegetation that does not meet either of the Guidelines definitions may include:

- isolated native shrubs or native grass tussocks
- areas where native vegetation has been replaced by exotic species (e.g. pasture grasses).
- planted exotic vegetation such as crops, or in gardens
- Victorian native scattered trees that are growing in an ecological vegetation class (EVC) they would not normally occur in.

What to do if you are unsure

If you are unsure if the vegetation you propose to remove is native vegetation then you should assume it is native.

If you are unsure if a native tree you propose to remove is a scattered tree or part of a remnant patch, then you should assume it is part of a remnant patch if grouped in three or more trees and a scattered tree if less than three.

If you need any further guidance or assistance contact your local council.

If the vegetation proposed for removal is a remnant patch and/or a scattered tree go to Step 3.

Step 3 - Use the NVIM tool to prepare an application for a permit to remove native vegetation

The Native Vegetation Information Management (NVIM) tool has been developed to assist landowners prepare an application for a permit to remove native vegetation under Victoria's permitted clearing regulations.

The tool can be accessed at www.depi.vic.gov.au/nvim

To use the NVIM tool you need to know whether you are proposing to remove remnant patches and/or scattered trees and the exact location where the native vegetation is proposed to be removed.

Follow the instructions in the NVIM tool to navigate to the exact location where the vegetation is proposed to be removed, and identify any remnant patches and/or scattered trees proposed to be removed.

Once the native vegetation proposed to be removed has been identified, the NVIM tool then generates a biodiversity assessment report that fulfils the following application requirements for a low risk-based pathway application for a permit to remove native vegetation:

- the location of the site where native vegetation is to be removed
- the area of the remnant patch of native vegetation and/or the number of any scattered trees to be removed
- maps or plans containing information set out in Guidelines
- the risk-based pathway of the application for a permit to remove native vegetation
- the strategic biodiversity score of the native vegetation to be removed
- the offset requirements, should a permit be granted to remove native vegetation.

Non-standard clearing proposals

Some proposed native vegetation removal is considered non-standard and requires additional work to determine their risk-based pathway and offset requirement. Non-standard vegetation proposals are listed below. If your proposal involves any of the following situations, refer to Appendix D for explanation on determining your correct extent of clearing and appropriate offset requirements.

- Removal of canopy trees within a remnant patch without disturbing the understorey
- Removal of understorey without disturbing the canopy trees
- Removal of understorey as well as only some canopy trees.

Past permitted clearing

Vegetation permitted for removal in the past five years on the same property and in the same ownership as the current proposal needs to be considered when determining the risk-based pathway, even if the permitted clearing has not occurred yet. Applicants in this situation are required to create two separate reports in the NVIM tool.

- Report 1: Mark all permitted clearing from the past five years, as well as the current proposal. This report will determine which risk-based pathway the current proposal will be assessed under.

If report 1 determines that the current proposal will be assessed under the low risk-based pathway, a second report is created.

- Report 2: Mark only the vegetation to be removed under the current proposal. The report will determine the offset requirement, if a permit is granted.

If the tool has determined that the proposed vegetation removal is in the low risk-based pathway, continue to Step 4.

If the tool has determined that the proposed vegetation removal is in the moderate or high risk-based pathway, do not use this Applicant's kit. Refer to [Meeting the moderate and high risk-based pathway applications requirements](#) information sheet for details on how to prepare an application in these pathways.

Step 4 – Complete additional application requirements

Along with the biodiversity assessment tool report, additional information may be required with your application, where applicable:

- photographs of the native vegetation to be removed
- a defendable (bushfire) space statement (if applicable)
- property vegetation plan (if applicable)
- past permitted clearing on the same property (if applicable)
- topographical information
- Native Vegetation Precinct Plan (NVPP) statement (if applicable).

Recent photographs (dated) of the native vegetation to be removed

You must provide recent photographs (dated) of the vegetation that is proposed to be removed. All photographs must be clear and show whether the vegetation is a remnant patch or scattered trees. Provide photos of all the native vegetation proposed to be removed and provide photos taken from different locations. It is desirable to include close-up photographs of leaf, bark, flower and fruit (as applicable) to assist in identification. If the area of native vegetation to be removed is large, provide photos that are indicative of the native vegetation.

Defendable (bushfire) space statement

Where the purpose of removal, destruction or lopping of native vegetation is to create defendable space, you must supply a statement that explains why removal, destruction or lopping of native vegetation is necessary. The statement must have regard to other available bushfire risk mitigation measures. This requirement does not apply to the creation of defendable space in conjunction with an application under the Bushfire Management Overlay

Property vegetation plan if one applies to the site

If an approved property vegetation plan (PVP) applies to your property it must be submitted with the application.

A PVP is a voluntary agreement between DEPI and a landowner which considers all the vegetation on their property and how it is to be managed over the next ten years. A permit application on a property with an approved PVP will not be objected to if the removal is in accordance with the PVP.

Detail of previous clearing on the same property in the last five years

Indicate in the application form whether past permitted clearing has occurred. If past permitted clearing has occurred;

- record the amount of remnant vegetation cleared in hectares
- record the number of scattered trees cleared
- provide the biodiversity assessment (NVIM) report containing past permitted clearing (Report 1), in addition to the NVIM report for the current proposal only (Report 2).

Topographic information

Topographical information is required in accordance with Clause 52.16 and Clause 52.17 in local planning schemes, but it is not part of the biodiversity assessment of the application in accordance with the Guidelines. It is assessed under consideration of protecting water quality and systems, prevention of land degradation, and prevention of adverse effects on groundwater quality on land. The native vegetation assessor may be able to assist and the GeoVic website may also help <http://www.energyandresources.vic.gov.au/earth-resources/maps-reports-and-data/geovic>. Once at the map layer, zoom to your area of interest and add required data layers.

Provide topographic information, highlighting:

- Ridges
- Crests
- Hilltops
- Streams
- Waterways
- Slopes greater than 20 percent
- Drainage lines
- Low lying areas
- Saline discharge areas
- Areas of existing erosion

Statement responding to the native vegetation precinct plan (NVPP)

An application submitted under Clause 52.16 must include a statement which explains how the proposal responds to the precinct plan considerations in 52.16-6. These include:

- the purpose and objective of the NVPP
- the effect on native vegetation identified for protection in the NVPP
- the potential for the effectiveness of the NVPP to be undermined
- the potential for the proposed development to lead to the loss or fragmentation of native vegetation identified for protection in the NVPP
- offset requirements in the NVPP.

Step 5 – Complete application form and lodge the application

You must ensure that all the correct information is lodged with your application. The information required for the low risk-based application in accordance with Clause 52.16 and 52.17 is listed below. Check your application against this required information.

- completed low risk-based pathway permit application form (included at Appendix A)
- biodiversity assessment report from the NVIM tool
- photographs of native vegetation to be removed
- defensible (bushfire) space statement (if applicable)
- property vegetation plan (if applicable)
- details of previous clearing (if applicable)
- topographic information
- Native Vegetation Precinct Plan (NVPP) statement (if applicable).

Once all application requirements have been compiled, lodge your application along with any other requirements of the planning scheme with your local council.

It is important to ensure that the information submitted to council in your application for a planning permit is complete. Applications which do not contain all the required application requirements cannot be assessed. A request will be made to the applicant to submit the missing data. Once all the application requirements have been submitted, the application will be assessed by council.

Appendix A: Permit application form – low risk-based pathway

This application form should accompany any application to remove native vegetation that is in the low-risk based pathway. Complete all questions on the form and provide any required additional information.

Refer to the permit applicant's kit for assistance in filling out this application form.

A *Biodiversity assessment report* can be generated by the Native Vegetation Information Management (NVIM) tool located on the Department of Environment and Primary Industries website. In addition to the *Biodiversity assessment report*, please address the application requirements below.

1. Is a planning permit required to remove native vegetation?

Yes permit required

No permit required

No application required

2. Risk-based pathway

What is the risk-based pathway of the application for a permit to remove native vegetation?

Low risk-based pathway

Moderate risk-based pathway

This application form should not be used for moderate and high risk-based pathway applications.

High risk-based pathway

3. Biodiversity assessment report from NVIM tool

A *Biodiversity assessment report* has been generated and is provided with this application, and

The proposed vegetation removal is partial clearing (ie. Only understorey is removed). The condition score has been halved in the report and the offset requirement recalculated.

4. Additional application requirements

a. Photographs of the native vegetation to be removed

Appropriate photographs are provided with the application

b. Defendable space statement (if applicable)

Where the purpose of removal, destruction or lopping of native vegetation is to create defendable space, a statement is required that explains why removal, destruction or lopping of native vegetation is necessary. The statement must have regard to other available bushfire risk mitigation measures. This requirement does not apply to the creation of defendable space in conjunction with an application under the Bushfire Management Overlay

A statement is not required

A statement is provided below that explains why removal, destruction or lopping of native vegetation is necessary to create defendable space, having regard to other available bushfire risk mitigation measures

STATEMENT:

Appendix B: Exemption guidance

Clause 52.16 and 52.17 include exemptions from requiring a permit to remove native vegetation under these clauses. Clause 52.48 also includes exemptions from requiring a permit to remove native vegetation specific to bushfire protection. This appendix provides details on how these exemptions are to be applied.

Overarching

Exemptions within the clause operate independently of one another

If the removal is exempt under one of the exemptions (even if not exempt under another) then it is exempt from requiring a permit.

Minimise the removal

Exemptions operate on the basis that removal, destruction or lopping of native vegetation is to be undertaken to the minimum extent necessary. This is achieved through the planning, design and carrying out of the activities, building or works.

Keeping track of native vegetation removal

Landholders may be required to provide details of native vegetation which is removed under an exemption. Keeping records of this removal is recommended.

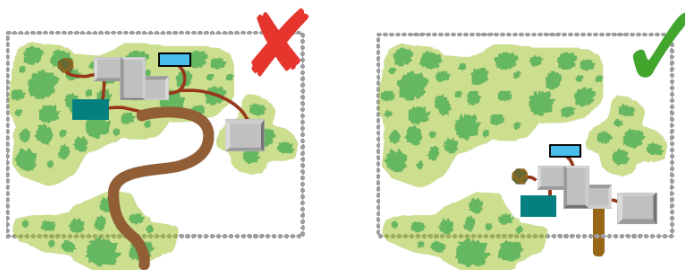
Overlays may still require a permit when an exemption applies under 52.16 or 52.17

A number of overlays require a permit for the removal of vegetation. These include: Environmental Significance Overlay, Vegetation Protection Overlay, Significant Landscape Overlay, Heritage overlay, Neighbourhood Character Overlay, Salinity Management Overlay, and Public Acquisition Overlay. The planning permit requirements under these overlays are separate to the requirements under Clause 52.16 and Clause 52.17, including different exemptions. If one of these overlays applies to the site where the native vegetation is to be removed a planning permit for the removal may still be required to remove vegetation, even if an exemption under Clause 52.16 or 52.17 applies.

Specific guidance for exemptions in 52.16 and 52.17

Avoid the removal

Several exemptions do not apply where there is a practical opportunity to site buildings and works to avoid the removal, destruction or lopping (removal) of native vegetation. Designs should locate buildings and works to avoid impacts on native vegetation where this is practical.



Agreements with Secretary to the Department of Sustainability and Environment

Some exemptions apply if the removal of native vegetation is done in accordance with a written agreement with Secretary to the Department of Sustainability and Environment. This is now the Secretary of the Department of Environment and Primary Industries. Written agreements must be in place before any removal occurs.

Lopping and pruning for maintenance

No more than one third of the foliage is to be removed without a permit to ensure the survival of the plant. The type of maintenance activities that this covers include maintaining private access ways and keeping overhanging branches clear of buildings.

Emergency works

This allows for the removal of native vegetation which presents an immediate risk of personal injury or damage to property. Only that part of the native vegetation which presents the immediate risk can be removed. For example, if a tree branch has been damaged in a storm but the remainder of the tree is unaffected, only the branch which poses the immediate risk can be removed without a permit.

Personal use

Refers to the removal of vegetation by cutting only; for example by axe, handsaw or chainsaw.

Exemptions with time limits

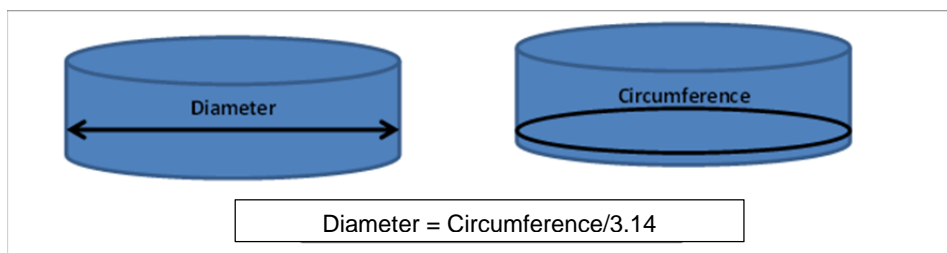
Several exemptions only allow a specified area or amount of native vegetation removal within a five year period. This period commences on the day that native vegetation is first removed under the exemption. If the exemption limit is reached within two years, no more vegetation can be removed under that exemption for another three years – a permit would be required if more vegetation was to be removed.

Contiguous land in the same ownership

Several exemptions permit a specified area or amount of native vegetation removal on contiguous land in the same ownership. Contiguous land is land which may be in different titles but which either shares a boundary or is in close proximity, for example, located either side of a road. For example, if a property ownership is made up of three separate 25 hectare titles with shared boundaries, under the exemption for new buildings and works in the Farming Zone and Rural Activity Zone the maximum amount of native vegetation (not including a tree) that can be removed across all three titles is 1 hectare. The exemption does not enable the removal of 1 hectare of native vegetation on each title.

Tree size

Several exemptions include specific conditions related to the size of a tree measured at breast height. This is a measure of trunk diameter at a height of 1.3 metres above ground level. Measuring diameter can be done using a diameter tape. Alternatively the circumference can be measured around the tree; this is then divided by 3.14 to determine the diameter.



Agricultural production

Some exemptions apply to the removal of native vegetation associated with the construction or maintenance of buildings and works used for agricultural production. Agricultural production is any form of primary production of renewable commodities including crop raising, cattle grazing, animal breeding and intensive animal industries. It does not include extractive industry, mining or timber production from native forest.

Fences

This exemption permits the removal of native vegetation to construct a fence on a boundary between properties in different ownership or to operate or maintain an existing fence. The combined width of clearing on either side of the fence must not exceed 4 metres. For example, you could clear 1 metre on one side of a fence, and 3 metres on the other.

Exemptions apply for removal to the minimum extent necessary, to fulfil this requirement, tree branches overhanging the clearance zone should be retained where possible. This exemption does not apply to the construction of internal fences, these may require a permit.

Vehicle access from public roads

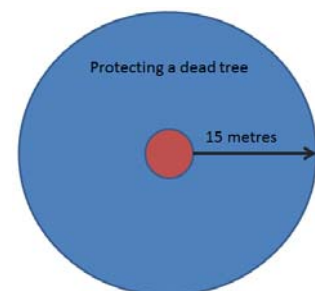
This exemption permits the removal, destruction and lopping of native vegetation for the construction or maintenance of a vehicle access across a road reserve from a property boundary to a public road. Only properties which share a common boundary with the road reserve can remove vegetation under this exemption. The maximum total width of native vegetation permitted to be cleared under this exemption is 6 metres. Authorisation from the relevant public land manager must always be obtained before any works, including vegetation removal, can be undertaken in a public road reservation.

Dead trees

Permit requirements under Clause 52.16 and Clause 52.17 apply to dead native vegetation. The table of exclusions under 52.17 exempt the need for a permit if the vegetation is dead, except for standing dead trees with a trunk diameter of 40 centimetres or more at a height of 1.3 metres above the ground. For a dead tree to be considered protected, a radius of 15 metres from the base of the dead tree must be fenced and protected from any development or use impact.

Under Clause 52.17, any dead tree that has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above the ground must be treated as a scattered tree, offsets will be required as per the Guidelines.

Under Clause 52.16, dead native vegetation must be treated as per living native vegetation – it may be a patch of native vegetation or scattered trees.



Bushfire protection exemptions under Clause 52.48

Clause 52.48 allows the removal, destruction or lopping of vegetation to reduce fuel load around existing buildings used for accommodation and adjacent to fences on property boundaries without requiring a planning permit. These permit exemptions for vegetation removal only apply to buildings and fences existing or approved before 10 September 2009.

Clause 74 of all planning schemes defines 'accommodation' as 'land used to accommodate persons.' A building used for accommodation includes dwellings (houses) and other types of accommodation such as a dependent person's unit, group accommodation and a bed and breakfast.

These exemptions apply to:

- any requirement of a planning permit, including any condition, which has the effect of prohibiting the removal, destruction or lopping of vegetation (if vegetation was to be protected in a planning permit it can be removed for bushfire protection); or
- any requirement of the planning scheme to obtain a planning permit (this includes Clause 52.16, Clause 52.17 and any overlay clause); or
- any provision in the planning scheme which prohibits the removal, destruction or lopping of vegetation; or
- any provision in the planning scheme that requires the removal, destruction or lopping of vegetation to be carried out in a particular manner.

Provided that the vegetation to be removed is to protect a building or fence that was approved or constructed before 10 September 2009.

These exemptions do not apply to:

- proposed buildings and fences
- areas covered by Banyule, Bayside, Boroondara, Brimbank, Darebin, Glen Eira, Greater Dandenong, Hobsons Bay, Kingston, Knox, Maribyrnong, Maroondah, Melbourne, Monash, Moonee Valley, Moreland, Port of Melbourne, Port Phillip, Stonnington, Whitehorse and Yarra planning schemes
- legal agreements or covenants that have the effect of prohibiting the removal, destruction or lopping of native vegetation. Legal agreements and covenants can be used to secure offsets for vegetation that has been permitted to be removed. Agreements are typically established under section 173 of the Planning and Environment Act 1987 or section 69 of the Conservation, Forests and Lands Act 1987. A covenant can also be applied to vegetation under section 3A of the Victorian Conservation Trust Act 1972.

Appendix C: Existing use rights guidance

Section 6(3) of the Planning and Environment Act 1987 provides for existing use rights. Clause 63 of the Victoria Planning Provisions provides additional information. The provisions mean that a planning scheme or an amendment to the planning scheme cannot prevent the continued use of land that was being legally used at the time that the scheme was introduced or amended.

Existing use rights allow for:

- the continued use of the land where no buildings or works have been erected
- the use of any building or works that were completed before the change
- use of any building or works that were under development when the change happened.

Existing use rights also prevents the requirement for removal or amendment of any lawfully constructed building or works.

Existing use rights and native vegetation removal

The following questions can assist in determining if existing use rights are applicable in the case of native vegetation removal.

Question 1 – Was the use being undertaken before the requirement to obtain a permit to remove native vegetation was introduced into the planning scheme?

The requirement for a permit to remove native vegetation was introduced into planning schemes in 1989. For existing use rights (including the right to remove native vegetation) to be established the use needed to be legally taking place at that time (i.e. in 1989). Planning schemes also provide for an existing use to be lawfully established if proof of continuous use for 15 years is established in accordance with Clause 63.11 of the planning scheme.

Question 2 – Has the use been continuous?

Existing use rights cease if the use stops or has stopped for a continuous period of either:

- two years
- for two or more periods which add up to two years in a three year period
- for seasonal use where the use has not taken place for two years in succession.

Question 3 – Where do the existing uses apply?

Existing use rights apply to land, not to the owners or others with an interest in the land.

Property boundaries can be used to determine the area where the existing use applies, if the property has one existing use. If the property is used for different uses consider the existing use in the area where the native vegetation is proposed to be removed.

Question 4 – Is the removal of native vegetation integral to the use?

Existing use rights generally apply to continuous uses of land, not undertaking works or development. The removal of native vegetation must be integral to the use in order to be part of the existing use right.

Existing use rights and agriculture

Existing use rights to remove native vegetation may be established for certain agricultural activities. This is because some agricultural uses involve the removal or destruction of native vegetation, and these use have may have been occurring in a location for a period long enough that a right to continue these uses without a permit has been established.

For example, where an existing use right for agriculture has been established, there are some actions that are deemed to be inherent in that use and as such do not require a permit to remove the native vegetation. However, there are other more significant activities (works) that may be proposed that will require a permit to be applied for if they result in the removal or destruction of native vegetation. Table 2 provides examples of these activities.

Table 1 Activities associated with an agricultural existing use right that may or may not require a permit if an agriculture existing use right is established

No permit required	Permit required
<ul style="list-style-type: none"> • Mowing native grasses • Grazing native grasslands • Pasture raising by broadcasting without harrowing • Pasture raising by broadcasting with harrowing. • Pasture raising by direct drilling • Crop raising by ploughing and planting 	<ul style="list-style-type: none"> • Rock removal • Removing, destroying or lopping wooded native vegetation • Building and development that requires earthworks or land-forming Building on stilts over native vegetation

Use characterisation

Case law and VCAT rulings have noted that use should be characterised at the appropriate level of generality that identifies the real and substantial purpose for which the land is being used. The courts have refused to categorise a use so narrowly or prescriptively that natural changes in the method of using the land or carrying on a business will render the existing use right valueless.

Equally, the courts have been concerned not to categorise the purpose of a use so broadly that the land could be used for a prohibited purpose which was not given part of its use at the relevant date. "One should simply ask what, according to ordinary terminology, is the appropriate designation of the purpose being served by the actual use of the premises, and seek to describe such use only at that level of generality that is necessary and sufficient to broadly cover the activities at the relevant date."

For example, past cases have concluded that use be characterised as:

- 'bakery' not 'baking bread' or 'light industry'
- 'for pottery making' not 'light industry'
- 'off-road motorcycle events and activities' not 'motor racing track'
- 'animal husbandry' not 'agriculture', and that
- use for 'grazing' does not give use for 'vineyard'.

The context and scale of proposed works is considered with the use characterisation when determining if a planning permit is needed. There are no simple rules that can be applied in each and every case.

Relevant definitions

Use in relation to land includes use or proposed use for the purpose for which the land has been or is being or may be developed

Development includes:

- the construction or exterior alteration or exterior decoration of a building
- the demolition or removal of a building or works
- the construction or carrying out of works
- the subdivision or consolidation of land, including buildings or airspace
- the placing or relocation of a building or works on land
- the construction or putting up for display of signs or hoardings.

Works includes any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil.

Appendix D: Partial clearing

Partial clearing is the removal of part but not all of the native vegetation from a remnant patch in one location. It can be the removal of canopy trees from a patch of native vegetation or the removal of understorey vegetation only from a patch.

Examples of partial clearing include:

- removing canopy trees within a patch of native vegetation e.g. for tree plucking or selective harvesting
- removing some or all understorey vegetation e.g. around new dwellings for bushfire protection or to improve sight lines at road intersections
- removing some or all understorey vegetation as well as some canopy trees.

Determining the risk-based pathway for partial clearing

Removing some canopy trees from a patch of native vegetation

When only some canopy trees are to be removed from a patch of native vegetation, the trees are treated as if they are scattered trees. The location and number of trees to be removed determines the risk-based pathway.

Removing some or all understorey native vegetation

When removing some or all understorey vegetation from a remnant patch the full extent (in hectares) of where the native vegetation will be removed is used to determine the risk based pathway of the application. For example, the total area of a residential development where a Bushfire Management Overlay applies, including the inner and the outer zones, is used to determine the risk-based pathway.

Removing some or all understorey native vegetation and some canopy trees

When removing some or all understorey vegetation as well as some canopy trees from a patch the full extent (in hectares) of where the native vegetation will be removed is used to determine the risk based pathway of the application.

Calculating offset requirement for partial clearing

Removing some canopy trees from a patch of native vegetation

The offset for removing some canopy trees is calculated using the standard extent and the condition score from the *Native vegetation condition map* in the NVIM tool.

Removing some or all understorey native vegetation

As only part of the native vegetation is being removed the offset requirement is adjusted accordingly. The offset amount is determined by halving the condition score of the native vegetation to be removed and combining this with the area of impact. This adjustment is done manually, by crossing out the condition score on the biodiversity assessment report from NVIM and writing in the adjusted condition score. All calculations will need to be adjusted manually on the report using the adjusted condition score.

Removing some or all understorey native vegetation and some canopy trees

Removing native vegetation from all structural layers of a remnant patch has a significant impact of the ecological integrity of the remnant patch. Offset requirements for the understorey is determined as above, this is added to the offset requirement for the canopy trees, up to a maximum. The maximum offset requirement for this form of clearing will be equivalent to complete clearing of the remnant patch.

Using the NVIM tool to prepare an applications that include partial clearing

The NVIM tool can be used to determine the risk-based pathway of an application that includes partial clearing.

The NVIM tool can also be used to determine the offset requirements if the application is in the low risk-based pathway.

The NVIM tool cannot be used to determine offset requirements if the application is in the moderate or high risk-based pathway. DEPI native vegetation support will determine these on receipt of the required GIS shapefiles.

a) Removing only some canopy trees from a patch of native vegetation

Step 1: Identify the area where native vegetation will be removed

Using the 'mark scattered tree' tool in the 'identify native vegetation' drop down menu, mark the trees you wish to remove. Proceed to results, calculate offset requirements and download the report.

Step2: Include the report with your application for a permit

The report will state your offset requirements. No adjustments to the report are required for removal of some canopy trees. Include the biodiversity assessment report with your application for a permit.

b) Removing only some or all understory vegetation**Step 1: Identify the area where native vegetation will be removed**

Using the 'mark remnant patch' tool in the 'identify native vegetation' drop down menu, mark the total area of native vegetation to be removed. Proceed to results and calculate offset requirements and download and print the report.

Step 2: Manually amend the biodiversity assessment report

Manually amend (with a pen) the offset requirements detailed in the biodiversity assessment report as follows:

- a) multiply the condition score by 0.5
- b) multiply the new condition score by the extent of the partial clearing to determine a new habitat hectares amount
- c) multiply the new habitat hectares amount by the strategic biodiversity score to determine the general biodiversity equivalence score
- d) multiply the new general biodiversity equivalence score by 1.5 to determine the offset amount.

The minimum strategic biodiversity score and location of the offset will remain the same.

Step3: Include the report with your application for a permit

Include this amended report with your permit application.

c) Removing some or all understory vegetation and some canopy trees from the same remnant patch**Step 1: Identify the area where native vegetation will be removed**

Using the 'mark remnant patch' tool in the 'identify native vegetation' drop down menu, mark the total area of native vegetation to be removed. Proceed to results and calculate offset requirements and download and print the report This is called Report A.

Step 2: Manually amend the biodiversity assessment report

Manually amend (with a pen) the offset requirements detailed in the biodiversity assessment report as follows:

- a) multiply the condition score by 0.5
- b) multiply the new condition score by the extent of the partial clearing to determine a new habitat hectares amount
- c) multiply the new habitat hectares amount by the strategic biodiversity score to determine the general biodiversity equivalence score
- d) multiply the new general biodiversity equivalence score by 1.5 to determine the offset amount.

This is called adjusted Report A.

Step 3: Mark the canopy trees to be removed

Using the 'mark scattered tree' tool in the 'identify native vegetation' drop down menu, mark the trees you wish to remove. Proceed to results, calculate offset requirements and download the report. This is called Report B.

Step 4: Determine offset requirements for the removal

Add the biodiversity equivalence units from the offset requirements in adjusted Report A to the biodiversity equivalence units of Report B together to determine the amount of offset required. The minimum strategic biodiversity score and location of the offset will be taken from Report A. Note: If the combined biodiversity equivalence unit amount is greater than the amount in Report A, then the amount of units in Report A is the offset amount.

Step5: Include the reports with your application for a permit

Include the two report with your permit application.

d) Removing a combination of complete and partial clearing on a site

The tool can be used to prepare the biodiversity assessment reports that are included with your permit application to remove native vegetation that includes a mix of partial and full clearing, for example clearing to construct a house in a Bushfire Management Overlay area.

Step 1: Identify the total area where native vegetation will be removed

Using the 'mark remnant patch' tool in the 'identify native vegetation' drop down menu, mark the total area of native vegetation to be removed. Proceed to results, calculate offset requirements and download the report, called Report 1. This report confirms the risk-based pathway for the application, contains the strategic biodiversity score and the location attributes for the offset.

Step 2: Prepare report for full clearing areas

Mark the area of native vegetation where total clearing will occur. Proceed to results, calculate the offset requirements and download the report. This is called Report 2.

Step 3: Prepare report(s) for partial clearing

Start again and used the tool to mark the area of native vegetation where the partial clearing will occur. Proceed to results, calculate the offset requirements and download the report. This is called Report 3 and should be adjusted as required and described in (c) above.

Step 4. Consolidate the information to determine offset requirements

Add the offset amounts (general biodiversity equivalence units) from Report 2 and Report 3 together to determine the total offset amount for the application.

The location, strategic biodiversity score of the native vegetation to be removed and the minimum strategic biodiversity score that the offset site must meet are taken from Report 1.

Submit all three reports with your application for a permit to remove native vegetation to the local council.