

# Traditional Owners - Application of Clause 52.17 Exemptions

Native Vegetation Removal Guidance Note - April 2024

## Native vegetation removal regulations

A Clause 52.17 (Native vegetation) planning permit from council is required to remove, destroy, or lop native vegetation, unless there is an exemption to that requirement. A planning permit application must address the application requirements of the [Guidelines for the removal, destruction or lopping of native vegetation](#) (Guidelines).

The purpose of Clause 52.17 is to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation by applying the avoid, minimise, and offset hierarchy. Avoid and minimise are the priority components of the hierarchy.

### Exemptions

A Clause 52.17 permit is not required when native vegetation removal, destruction or lopping is in accordance with the description of an exemption listed in Clause 52.17-7. Some exemptions are specific to areas of land or a sector of the population, while many of the exemptions are applied more broadly.

**Traditional Owners** can rely on any of the exemptions which are applicable to their proposed works. An explanation of the application of each exemption is available within [Exemptions from requiring a planning permit to remove, destroy or lop native vegetation: Guidance](#). It covers matters such as fence lines, planted vegetation and fire protection work. However, Table 1 outlines the exemptions that are most applicable to native vegetation removal activities conducted by Traditional Owner groups or their members, when applied in accordance with their descriptions.

### Purpose

The purpose of this guidance note is to identify and describe Clause 52.17 exemptions which are most applicable to native vegetation removal conducted by Traditional Owners.

#### Note:

- Since the development of this Guidance note, additional agreements or determinations may have been entered into by Traditional Owner groups.
- Links inserted into this document are meant to provide easy access to agreements. However, updates to links may occur from time to time.

# Victoria Planning Provisions

**Table 1: Most applicable exemptions for Traditional Owners**

The requirement to obtain a permit does not apply to:	
<ul style="list-style-type: none"> <li>Conservation work</li> </ul>	<p>Native vegetation that is to be removed, destroyed, or lopped to the minimum extent necessary to enable the carrying out of conservation work:</p> <ul style="list-style-type: none"> <li>Which provides an overall improvement for biodiversity; and</li> <li>With written agreement of the Secretary to the Department of Energy Environment and Climate Action (as constituted under Part 2 of the <i>Conservation, Forests and Lands Act 1987</i>).</li> </ul>
<ul style="list-style-type: none"> <li>Crown land</li> </ul>	<p>Native vegetation that is to be removed, destroyed, or lopped to the minimum extent necessary to manage Crown land:</p> <ul style="list-style-type: none"> <li>By or on behalf of the Secretary to the Department of Energy, Environment and Climate Action (as constituted under Part 2 of the <i>Conservation, Forests and Lands Act 1987</i>), the Great Ocean Road Coast and Parks Authority or Parks Victoria, and in accordance with the <i>Procedure for the removal, destruction or lopping of native vegetation on Crown land</i>.</li> </ul>
<ul style="list-style-type: none"> <li>Traditional Owners*</li> </ul>	<p>Native vegetation that is to be removed, destroyed, or lopped by a person acting under, and in accordance with:</p> <ul style="list-style-type: none"> <li>A Natural Resource Agreement under Part 6 of the <i>Traditional Owner Settlement Act 2010</i></li> <li>An authorisation order made under sections 82 or 84 of the <i>Traditional Owner Settlement Act 2010</i> as those sections were in force immediately before the commencement of section 24 of the <i>Traditional Owner Settlement Amendment Act</i> in 2016 (1 May 2017).</li> </ul>

\*The Traditional Owners exemption is included in other clauses of the Victoria Planning Provisions, such as overlays including the Environmental Significance Overlay, Vegetation Protection Overlay, Erosion Management Overlay and the Salinity Management Overlay.

## 1. Conservation work exemption

This exemption is available to any landowner or land manager that is undertaking a removal activity that has a primary purpose of biodiversity improvement on land they own or manage.

Traditional Owners can rely on this exemption with written agreement from the Secretary to the Department of Energy, Environment and Climate Action (DEECA), in accordance with the following:

- [Conservation work exemption – Application guidance](#); and
- [Template for small-scale conservation work exemption application](#).

Traditional Owners should discuss any proposals to rely on this exemption with DEECA's Natural Environment Programs team or Native Vegetation Regulation team to determine if it's applicable.

### Note:

Native vegetation removal resulting in an overall improvement for biodiversity is the primary purpose of this exemption. Activities involving native vegetation removal carried out for cultural reasons may also have an overall benefit for biodiversity.

## 2. Crown land exemption

Traditional Owner Corporations are not explicitly identified as one of the organisations able to rely on this exemption. However, as partners with the State, they can rely on this exemption when they undertake native vegetation removal on land under their Joint Management or Co-operative Management Agreement with the State of Victoria.

- **Joint management of public land**

This is a key outcome under a Recognition and Settlement Agreement. Joint management is a formal and ongoing partnership between a Traditional Owner group and the Victorian Government in the management of designated parks and reserves. Joint management recognises the unique cultural connection of Traditional Owners to Country and seeks to integrate their knowledge, culture, and values into the management of public land.

- **Co-operative management of public land**

This is a key outcome of Native Title determinations. Co-operative management is a formal partnership between a Traditional Owner Group and the Victorian Government in the management of designated parks and reserves. The objective is to recognise the cultural connection of the Traditional Owners to Country, and to provide for their active involvement in management and decisions of that area. This includes the integration of traditional knowledge, internal decision-making processes and perspectives into management planning and works programs.

### **Compliance with the Crown land procedure**

Under this exemption, native vegetation removal is categorised as either maintenance or new removal and must follow the requirements of the Procedure for the removal, destruction or lopping of native vegetation on Crown land (Crown land procedure).

To rely on this exemption the works must be on Crown Land and the Traditional Owner Corporation must have either:

- a Traditional Owner Land Management Agreement providing for joint management over Crown land in which the action is to take place; or
- a Co-operative Management Agreement providing for co-operative management over the park or reserve in which the action is to take place.

### **Traditional Owners currently with Joint Management or Co-operative Management**

As of April 2024, Joint Management/Co-operative Management partnerships are in place with the following Traditional Owner groups for specific reserves (Agreements with Traditional Owners and Parks and Reserves under Joint management):

- Gunaikurnai Joint Management represented by Gunaikurnai Land and Waters Aboriginal Corporation
- Yorta Yorta Joint Management and Co-Management represented by Yorta Yorta Nation Aboriginal Corporation
- Dja Dja Wurrung Joint Management represented by DJAARA – Dja Dja Wurrung Clans Aboriginal Corporation
- Taungurung Joint Management represented by Taungurung Land and Waters Council
- The Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk People Joint Management represented by Barengi Gadjin Land Council
- Gunditjmara co-management represented by Gunditj Mirring Aboriginal Corporation.

### 3. *Traditional Owner* exemption

A Traditional Owner can rely on this exemption if they are removing native vegetation in accordance with a Natural Resource Agreement (NRA) under the *Traditional Owner Settlement Act 2010* (TOSA) . In some cases, where the activity requires specific skills and experience to ensure the activity is conducted safely, contractors or staff may be acting on behalf of the Traditional Owner with their oversight.

NRAs include agreed lists of activities which members of the Traditional Owner group may conduct within the defined NRA area and in accordance with the NRA. Each NRA is based on the same template. However, there may be some subtle differences that have been negotiated with each group, so it is important to be across the NRA in question.

There are two types of NRAs made under the TOSA:

- **NRA** which relates to public land as defined under the TOSA. This excludes public land leased or licenced to private entities for commercial purposes.
- **Traditional Owner Land NRA (TOLNRA)** which relates to freehold land owned by a Traditional Owner corporation, its entities, or its members.

To rely on this exemption, the Traditional Owner should be a member of a Traditional Owner group who has a Recognition and Settlement Agreement with an NRA or a Traditional Owner Land Natural Resources Agreement over the land the activity is to take place on.

#### ***TOs currently with NRAs***

- Taungurung
- Dja Dja Wurrung
- Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples.

### DEECA consultation or involvement

If applicable, Traditional Owner groups may rely on the Crown Land and Traditional Owner exemptions without the involvement or knowledge of DEECA. However, if a Traditional Owner group requests assistance, DEECA would seek to:

- understand the purpose and land status of the proposed native vegetation removal;
- identify if the proposed native vegetation removal falls under:
  - one of these exemptions; or
  - another applicable exemption; or
  - requires a permit;
- provide options to avoid or minimise impacts on biodiversity values if using the Conservation Work or Crown Land exemptions;
- advise of other legislation which may have requirements if impacting upon biodiversity values.

## Other legislative considerations

Although there are applicable exemptions within Clause 52.17 of the Victorian Planning Provisions for native vegetation removal activities, other legislation may have obligations which need to be considered or complied with. DEECA staff may be able to assist in identifying other obligations. However, the responsibility lies with the Traditional Owner group to ensure compliance. Some legislation that may be applicable includes:

- *Native Title Act 1993*
- *Environmental Effects Act 1978*
- *Environment Protection and Biodiversity Conservation Act 1999*
- *Flora and Fauna Guarantee Act 1988*
- *Wildlife Act 1975.*

We acknowledge Victorian Traditional Owners and their Elders past and present as the original custodians of Victoria's land and waters and commit to genuinely partnering with them and Victoria's Aboriginal community to progress their aspirations.



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