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Determine the response to the controls

In summary, legislative controls may require permits for clearance of 'any' vegetation; of 'native' vegetation (on sites with area greater than 0.4 ha); of 'native' vegetation comprising habitat for listed endangered species of flora and fauna; of specifically identified individual trees or tree-scapes.

The implications for development proposals will vary from site to site according to the controls in place and the nature of the proposed development. However, the likelihood of Department of Health and Human Services sites being subject to vegetation controls is considered, in general, to be low.

Department facilities are principally located in metropolitan Melbourne and regional centres. The intensity of prior land use and development in these locations makes it unlikely that any original native vegetation remains extant at departmental portfolio sites other than, and rarely, as isolated trees.

In some locations, either 'exotic' or 'native' species may have been planted following clearance of the original 'native' vegetation and now may be afforded protection due to their heritage rather than environmental significance.

Domestic residential sites

These sites the 'less than 0.4ha site area' exemption and so the 'native' vegetation controls under clause 52.17 of planning schemes does not apply.

Controls, if any, will comprise 'overlays' most likely related to conservation of significant trees and tree-scapes. A permit will be required to remove a tree/trees to facilitate extension of existing improvements or site redevelopment.

It should not be assumed that the council will approve a permit application merely because it is sponsored by the department or portfolio entity. Council will consider a range of issues including the rights of the property owner, the condition and significance of the tree/trees, and the loss of amenity to the wider community.

If not approved, the applicant may appeal the decision to VCAT. The approval of VCAT should not be assumed.

In cases where development proposals are compromised by vegetation clearance controls, consideration should be given to disposal of the property and development at an alternative site where permit requirements do not apply.

Institutional sites

The department's institutional sites are considered to have a slightly higher exposure to vegetation controls than domestic residential sites simply because they have been in operation for long periods and are located on larger landholdings where trees of heritage significance and 'native' vegetation (remnant or regrowth) are more likely to occur.

Any sites adjacent to watercourses will also be impacted by catchment management controls and overlays associated with erosion and salinity management.

Permit requirements for vegetation clearance should be confirmed by consultants and reflected in facility 'masterplan' and feasibility study reports. Development objectives should be discussed with council who can advise:

- 1 whether a permit will be required
- 1 what information should be included in the application (together with application forms, guides and checklists)
- 1 what type of offsets would be suitable or required
- 1 whether any application would be referred to the 'Referral Authority'.

Consultants should consider vegetation controls like any other design constraint when developing options for a development proposal and include those that are based on full and partial retention of vegetation as well as those that are based on complete removal.

The consultant report should document the impacts of vegetation retention on the development proposal that, typically, will comprise:

- 1 additional costs resulting from increased design/construction complexity and
- 1 functional limitations resulting from sub-optimal space configurations and relationships.

These documented impacts can then inform discussions with council when permit applications are lodged. When reviewing permit applications for removal of vegetation, council is required to consider two sets of decision guidelines provided in the planning scheme.

1. General provisions - clause 65.01 (decision guidelines):

- 1 State Planning Policy Framework
- 1 Local Planning Policy Framework
- 1 Purpose of the zone and any overlay

- 1 Factors likely to contribute to land degradation
- 1 Extent and character of native vegetation and likelihood of its destruction and
- 1 whether native vegetation is to be or can be protected, planted or allowed to regenerate.

2. Particular Provisions - Clause 52.17-5 (Native Vegetation - Decision Guidelines)

- 1 Native Vegetation Framework
- 1 Whether proposed development can be located and designed to avoid removal
- 1 Whether proposed development can be located and designed to minimise removal
- 1 Need to offset the loss of native vegetation having regard to its conservation significance and
- 1 cumulative impact of native vegetation removal on biodiversity conservation and management

Wherever possible a development proposal on a departmental portfolio site should avoid disturbance or removal of vegetation; and where this cannot be achieved to minimise the amount of disturbance or removal consistent with the immediate objects of the proposal.

Where vegetation is to be removed, the development proposal must include the planting of native species in the 'landscape plan' in order to demonstrate an 'offset' for some if not all of the lost vegetation.

An offset is any works or actions to compensate for the loss of native vegetation arising from a development. An offset may be:

- 1 an area of existing remnant vegetation that is protected and managed
- 1 an area that is revegetated and protected
- 1 an area that is set aside for regeneration or restoration or
- 1 any combination of the above.

The size of the offset is graded according to the conservation significance of the native vegetation proposed for removal.

When reviewing a permit application, a council may seek advice from the department administering the Flora and Fauna Guarantee Act 1988 - currently the Department of Sustainability and Environment (DSE).

However, a council must refer the application to DSE as the designated 'Referral Authority' under clause 62.02 of the planning scheme (in accordance with s.55 of the Planning and Environment Act 1987) in cases of vegetation clearance involving:

- 1 A site area of greater than 10 ha
- 1 More than 0.5 ha of vegetation in an Ecological Vegetation Class with conservation significance of 'endangered', 'vulnerable' or 'rare'
- 1 More than 1.0 ha of vegetation in an Ecological Vegetation Class with conservation significance of 'depleted' or 'least concern'
- 1 More than 15 trees with a diameter of less than 40cm at 1.3m above ground; and
- 1 more than 5 trees with a diameter more than 40cm at 1.3m above ground.

Council and or DSE may require the proponent to undertake an ecological assessment to establish the 'ecological values' (nature, extent and conservation status of Flora and Fauna) present on the land in order to establish the ecological impacts of the permit application and the size of the required 'offset.'

The undertaking of an ecological assessment is a specialist consultancy and requires the engagement of an 'ecologist' to investigate and report in accordance with guidelines established by the Department of Sustainability and Environment to ensure compliance with the objectives of the 'FFG' and the 'NVF'

Department of Sustainability and Environment may recommend to council not to approve the permit application, to approve the application or to approve the application with conditions.

Public authority management agreement (PAMA)

Where a departmental portfolio site does comprise extensive native vegetation, it is recommended that the entity in control undertake a voluntary ecological assessment and negotiate directly with the DSE and reach agreement on a management plan that identifies areas that can be cleared as required as part of future development proposals and those that must be conserved.

The management plan should be formalised as a PAMA under the provisions of the Victorian Flora and Fauna Guarantee Act 1988.

The PAMA is an agreement between the Secretary DSE and the 'proponent'. If circumstances change over time, the PAMA can be amended by mutual agreement or where circumstances warrant, a new agreement executed.

Under a PAMA, clearance of native vegetation associated with future development may proceed without further approval from DSE so long as the development is in accordance with the provisions of the 'agreement'.

However planning permits will still be required from council on each occasion that a development is proposed involving clearance of native vegetation.

Native vegetation precinct plan

Subject to the ecological values of the site and the nature and extent of proposed future development, applications for planning permits may be considered administratively burdensome.

An alternative is the development of a Native Vegetation Precinct plan in accordance with clause 52.17-3 of the planning scheme.

The plan is prepared by the landowner and must be endorsed by council who must obtain the authorisation of the Minister for Planning to introduce the plan into the planning scheme. As an incorporated document, the plan can only be amended, withdrawn or replaced by a planning scheme amendment.

Any vegetation clearance pursuant to a Native Vegetation Precinct plan is exempt from the requirement for a planning permit under clause 52.17. However, it will still be necessary to obtain a planning permit if one is required by another provision of the planning scheme.

In cases where ecological values on a department portfolio site are considered significant and likely to compromise future development proposals, the execution of a PAMA either alone or in conjunction with a Native Vegetation Precinct Plan will provide greater certainty to the departmental entity in regard to areas where native vegetation may be cleared as part of future development proposals.

The engagement brief for an ecological assessment should include extension provisions to provide for negotiation of a PAMA and documentation of a Native Vegetation Precinct Plan as necessary.

Native vegetation offsets

In some cases, a department entity may not be able to satisfy Council / DSE requirements to 'offset' vegetation clearance with replacement native vegetation elsewhere on site.

To assist meeting offset requirements, the Victorian Government has launched the 'Bushbroker' Scheme whereby a proponent of a development involving vegetation clearance can purchase 'native vegetation credits' - a gain in the quality and or quantity of native vegetation established by another landowner through revegetation of cleared land and or improving the quality of existing native vegetation.

Native vegetation credits are listed on the BushBroker Register. The register can be searched for credits that match the offset requirement for a particular development proposal.

In cases where credits are not available, Council may accept in lieu payments from permit applicants as a condition of approval.