

Central Victorian Biolinks Alliance Inc.

29th April 2016

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

Re: Submission to review of native vegetation clearing regulations 2016

The Central Victorian Biolinks Alliance Inc. is an alliance of landcare and conservation management networks across central Victoria. The Alliance is managed by a board elected by the networks and comprising a wide diversity of people with a wide knowledge of conservation and natural resource management. Our vision is “people working together to maintain and restore a healthy natural environment” from the Grampians to the Victorian Alps and from the Murray River to the Macedon Ranges” and our broad goal is to “improve the connectivity, condition and resilience of landscapes and halt the further decline of species”.

We consider that controls on the clearing of native vegetation are a key part of the efforts of government and communities to achieve this goal. Central Victoria contains some of Victoria’s most heavily cleared landscapes, primarily on private land. The area is facing many threats ranging from the habitat fragmentation and extinction debt caused by past practices to the present threat of expanding urban and peri-urban development to the looming threat of climate change.

Net gain

Like many conservation groups, we were concerned with the previous change from “net gain” to “no net loss”. Government reports (cited in the Biodiversity 2036 plan) showed that there was a net loss even with the “net gain” policy. The “no net loss” policy has probably increased the likelihood of a net loss. While we agree that “net gain” will require investment as well as clearing regulations and reliance on natural processes, the Consultation Paper (Figure 2) makes some big assumptions:

1. Government investment and community investment are assumed to be sufficient to counter the losses from allowed uses, exemptions, and spread of weeds and pests. Government investment has declined and more reliance is being placed on community/volunteer donations of time and money. For example, networks of landcare groups are taking on more of the program delivery of CMA’s and government with one funded person to facilitate this work across each network. On the other hand, exemptions, etc have increased the amount of clearing, such as the removal fire fuel since Black Saturday, so that “the biggest cause of remnant native vegetation loss is through unregulated clearance” (VNPA 2016, p4). Not included in the figures are the continuing decline and loss of native vegetation on private land caused by illegal “tidying up”, pasture development and grazing, and failure to allow regeneration.

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Spread of weeds and pests has also gained impetus with the decline over many years in government programs and funding.

2. Offsetting assumes that the offset will be equivalent to the vegetation lost by permitted clearing. The idea that we can re-create entire ecosystems with all their diversity and functions is not realistic; only avoidance can ensure we do not lose functional ecosystems.
3. Natural recovery is assumed to replace native vegetation lost due to natural disturbance. With fragmentation and gradual loss of biodiversity particularly across rural landscapes inhibiting full recovery, and with failures to protect natural recovery from further disturbance, and with climate change seriously affecting recovery, it is hard to see how natural recovery can adequately replace the losses due to natural disturbance.

Proposed improvements:

Principle of avoidance first

We welcome the return to emphasizing avoidance over offsetting in assessing planning applications (**PI1**), but we are concerned that the general principle (Part 1.1.1) is that only “the most significant impacts on biodiversity are avoided or not permitted”. This leaves the policy open to interpretation and leaves a lot of native vegetation vulnerable where the planning agency might decide that the impact of its loss is not “significant”. So the policy of avoidance should be strongly supported by clear and rigorous processes and guidance with measurable outcomes that will ensure avoidance is the primary consideration.

Identification of Biodiversity Values

Essential to avoidance is the identification and recognition of the values and assets that we want to protect.

1. The proposed improvements in the Paper generally remain strongly within the State-wide concerns about threatened species. Some threatened species may have particular habitat requirements that can be clearly identified and mapped, but this is a very limited way to approach protection of biodiversity.

Other threatened species may have very broad requirements over wide geographic ranges that might vary between seasons and years and may be subject to climate change. We welcome the proposal to provide more emphasis on key habitat for dispersed species (**PI14**) but remain uncertain how this can be achieved for species with different habitat requirements in different seasons and years.

A big issue is that the protection of the habitat of threatened species may not adequately protect other species and ecosystems. Biodiversity includes the full range of species and the interactions that make up ecosystems. And, as identified in the draft Biodiversity 2036 plan, this biodiversity is needed for the full range of ecosystem functions that provide resilience to disturbance and the ecosystem services we need. Most of these benefits occur at local and landscape scales, not regional or State-wide scales. Even reliance on bio-regional measures of biodiversity values can fail to recognize the value of local biodiversity.

We support the idea of local parameters in the Regulations (**PI11**) but the proposal fails to clearly spell out how local Councils can provide clear and legally robust guidelines for planners (including specific overlays and provisions in their planning schemes - see more below).

2. Protection of biodiversity in the Regulations should also recognize the importance of connectivity at local, regional and state levels. Many of our landscapes are fragmented and depleted, and re-colonisation of patches requires connectivity to allow organisms to move through the environment. Connectivity increases the resilience of local ecosystems to the many small and local disturbances such as fire as well as the larger issues of drought and climate change. And networks of locally well-connected landscapes will become increasingly valuable at regional and state-wide scales as the

impacts of climate change develop. The previous White Paper “Securing Our Natural Future; Land and Biodiversity at a Time of Climate Change” emphasized the importance of connectivity and this principle has been written into the draft Biodiversity 2036 plan and in many regional planning documents (eg. Goulburn Broken Regional Catchment Strategy 2013-2019).

3. Within ecosystems, some features have a very high value. Older trees provide important habitat through high productivity and the presence of hollows. Because it takes 150 years or more for trees to reach their full value as habitat, Victoria is already facing a severe habitat-debt particularly for species that rely on tree hollows. Older trees were better recognised in the original Regulations and are widely identified as significant assets in many planning documents. As with the original Regulations, older trees should receive a high weighting in scoring systems. Scattered trees are important and the larger scattered trees are targeted in **PI15**, but all large old trees should be similarly targeted even if they occur within large stands of trees.

Improvements supporting avoidance

To support the principle of avoidance over offsetting, the Regulations need to make avoidance a more achievable option for Council planners and a more attractive option for developers.

1. Reduction of the low-risk thresholds (**PI5**) is a positive step to encouraging developers to choose avoidance over offsetting. However the proposed thresholds obviously need more consideration to ensure that even small but significant patches are flagged. Reintroduction of onsite revegetation for small scale clearance could be considered, but only if using a (low) impact/risk threshold and subject to the usual agreements.
2. Proposed requirements for an “avoid and minimize” statement (**PI7**) and offset strategy (**PI8**) for all applications are also positive steps to encourage avoidance over offsetting.
3. Better environmental assessment of sites may identify values that are worth protecting and including in high rather than low-risk pathways. Changes to maps (**PI6**) will be an important part of this process. But many features of particular importance may be overlooked without site visits. Habitat quality and particularly identification of old trees are not well identified on maps and may be overlooked without site visits. This proposal requires more properly qualified environment staff (see below).
4. We agree that policy guidance (**PI2, PI3, PI10**) is needed so that the choices between avoidance and offsetting can be fully understood by statutory planners and explained to developers.
5. We also agree that the regulations and policy guidance should look beyond the relatively narrow view of biodiversity (species) protection and include all the values and benefits to be gained by retention of native vegetation: those listed in Clause 52.17 and in the broader benefits provided by a healthy and connected environment (discussed above). Policy guidance should address ways to ensure that the environment – and particularly remnant patches and their landscape setting – are protected and managed to ensure they remain healthy even with climate change.
6. *Local biodiversity*: One of our concerns about the current regulations is that they fail to address local and landscape biodiversity values. **PI11** proposes that the regulations include a decision guideline for Councils for biodiversity values that are not included in state-wide biodiversity priorities. This would allow local communities such as Landcare and Conservation Management Networks to lobby and encourage Councils to include protection and enhancement of local biodiversity and biolinks in their planning schemes. Guidelines (**PI11**) need to particularly address how to include wildlife corridors and connections into the planning scheme. Ideally these corridor plans would cross municipal boundaries but this may be more difficult to implement except as partnerships between Councils. Maps of these local issues and aspirations would be included in the suite of maps mentioned in **PI6**.
7. *Strategic plans* are essential in this process, to provide legal support for planning decisions to identify and protect local native vegetation. So we also support the

proposal to provide guidance in strategic planning (**PI3**). Strategic planning avoids the risks posed by separate site by site assessments by providing a broader landscape vision under which the impacts of individual sites may be assessed. However strategic planning is a slow and costly process and the strategic plans of many Councils (particularly the poorer rural Councils) urgently need updating to reflect both the new information available for planning and the aspirations of the government and community for better protection and management of natural resources. So many Councils also need support as well as guidance to obtain the resources needed to carry out strategic planning.

8. *Exemptions* result in significant losses of native vegetation. While exemptions are necessary in many situations, some discrimination about what is needed and what can be avoided could go a long way to reduce the clearing of native vegetation. VNPA (2016) identify 34 exemptions and it is beyond the scope of this review to examine all these. We propose that:
 - all exemptions be reviewed as to their relevance and applicability given current community expectations and government standards on management of native vegetation. Fewer exemptions would also make the task of Councils much easier to explain and implement.
 - rigorous guidelines be developed on when and how exemptions are applied (as proposed in **PI20-24**)
 - offsetting of exemptions be considered to replace the large amount of vegetation loss that occurs under exemptions and to maintain the “no net loss” sought in these regulations.
 - the protocols for offsetting be developed, particularly addressing who should pay. We do not feel that it is fair to ask the community/tax payers to pay for offsets for removal of native vegetation that has a private benefit and public cost.
9. Clear links between the Regulations and other environmental legislation (eg. FFG Act) needs to be clarified, to allow planners to add legal rigour to their decisions.

Offsets

1. *Location of offsets:* Chapter 4 notes the issue in obtaining offset sites based on the state-wide biodiversity scoring, with some desirable offset sites having very low scores. Offsets were difficult to find under the original regulations. The criteria for offsets were modified to make them easier to find, but it allowed offsets in different ecosystems (EVCs) and a long way from the place where native vegetation was removed. This had two consequences. It did not address the continuing loss of rare and threatened ecosystems. And it failed to address the local issues created by the vegetation removal.

We support proposals that general offsets try to replace local losses due to permitted clearing with local offsets (**PI11, PI19**). Offset scoring could adopt some of the local/municipal values and plans mentioned above (parts 6 and 7, **PI11**). In particular, Councils could be engaged to use their local knowledge to identify the locations where offsets would have greatest local benefit (eg. filling gaps in corridors) and identify landholders who might accept offsets.
2. *Management of offsets:* Requirements for an offset strategy for all applications (**PI8**) is also a positive step to encourage avoidance over offsetting. But the offset strategy should include sufficient detail to demonstrate that all parties will meet the offset requirements. In particular, it should identify how the offset site will be managed and who will pay for the management. One issue with offsets is that the cost of on-going management is covered by the owner of the site and not the developer; it is a disincentive for landholders (and Councils) to take on offsets. Some form of trust fund could be identified in the offset strategy and included in the offset agreement.
3. *Crown land:* We support the improvements proposed in the management of offsets on crown land (**PI20**). Crown land is often perceived as “free” land for easements and roadways and is often less secure than private land under appropriate agreements.

Planning tools and staffing

We have been concerned about the reliance on maps over site inspection in the current regulations.

1. Maps, particularly those based on modeling, are indicative at best. Local conditions at a site can be much more complex environmentally and structurally and support a wider range of species and ecosystems (EVCs). So better maps (**PI6, PI13**) are welcome, but the full range of maps is needed. The inclusion of EVC's provides a much broader way to assess the impact of clearing at all scales. They are now well documented and can be readily assessed on extent, quality and rarity, so that the impacts of clearing on biodiversity can be measured. EVC's should be included in the maps used in the decision making process; this is discussed in 3.2.5 but not specified in the proposed improvements.
2. But maps are not an alternative to the site inspections proposed in **PI12**. In general, all sites should be inspected to at least ground-truth the maps and preferably provide a measure of the extent, diversity and condition of native vegetation against which sites can be better assessed and monitored. This would provide a higher level of confidence in planning decisions. It also allows local Council knowledge to be included in the decisions.
3. Staffing: Many Councils do not have staff who are adequately trained and competent in identifying, assessing and valuing the natural assets in the locality where they are making planning decisions. Some Councils do not have environmental staff who can assist planners. And in some Councils, internal consultation between planners and environment staff is poor. DELWP staff can provide some support but staff numbers and their capacity to support Councils have been reduced; this is a real issue for Council staff. Two matters need to be addressed:
 - Financial support is needed to improve the numbers of suitable qualified environment staff and their capacity to oversee planning processes – both strategic and statutory.
 - Strict protocols need to be in place to ensure that Council environment staff are consulted over planning decisions

Monitoring, compliance and enforcement

1. *Monitoring:* A key aspect of compliance and enforcement is monitoring, but it is usually the last to be considered and first to be forgotten when budgets are tightened. **PI4** proposes improved monitoring but there remain questions on what will be monitored to gain a real idea of the success of these regulations in protecting biodiversity values, how it will be monitored, who will be responsible for monitoring, and where the resources for monitoring will come from.

Councils also do not have the time and resources to monitor Section 173 agreements. We welcome the proposal to include Section 173 agreements in the Credit Register (PI18) and assume (?) that this will improve the tracking and monitoring of offsets. A related issue with offsets is the rapid turnover of land particularly in per-urban areas (average turnover of 4-5 years have been recorded in some Shires). So there is an additional imperative to monitor and ensure ongoing compliance of offsets to ensure new owners are clearly aware of their obligations.

So Councils need direct assistance and support from DELWP in monitoring the clearing of native vegetation, including "permitted" clearing, offsets and illegal clearing.

2. *Compliance and enforcement:* It is easy to become cynical when the regulations are not supported by adequate resources for compliance and enforcement. Landholders feel (often correctly) that they can get away with the removal of native vegetation. The ability of Councils to carry out monitoring, compliance and enforcement is very limited. They mostly just respond to complaints from community members (if any) that have sufficient knowledge and interest in native vegetation.

While we support the proposed improvements (PI25-29) we have some issues. Councils

should be strongly supported by state agencies. The few Council staff responsible for native vegetation regulations are often divided into environmental staff who are not necessarily skilled in enforcement and compliance officers who have limited knowledge of biodiversity. Guidance from above is not sufficient. Dedicated DELWP officers should be available to directly support Council staff through enforcement processes. state, in providing are under-resourced two

3. Penalties should be increased to cover the (estimated) costs of offsetting the vegetation lost plus the administration and legal costs associated with the infringement. This makes avoidance the cheaper option, and will go some way towards covering the costs of enforcement.
4. Compliance programs should include pro-active public education on both the regulations and the values of biodiversity and why we have these regulations. Authorities consistently fail to explain planning decisions and so it is left to the media and complainants to tell one side of each story – and build up antagonisms to these regulations.

Peter Mitchell

Secretary

Central Victorian Biolinks Alliance Inc.

References

VNPA 2016. Review of Native Vegetation Permitted Clearing Regulations.
<http://vnpa.org.au/admin/library/attachments/PDFs/Submission%20guides/Sub-native-veg-responses-29-proposed-improvements.pdf>. April 2016.