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# **Review of the Victorian Native Vegetation Clearing Regulations**

**May 2016**

**Submission by  
Manningham City Council**

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# 1. Introduction

Manningham City Council welcomes the opportunity to comment on the consultation paper *‘Review of the Native Vegetation Clearing Regulations’*. Manningham City Council is located 12km east of Melbourne and offers urban, peri-urban and rural properties in diverse landscapes, from highly modified urban contexts to more pristine bushland environments. Manningham City Council supports several threatened vegetation communities and many threatened flora and fauna species. Council has demonstrated commitment to protecting the municipality’s biodiversity, including through active community engagement and education, incentives for private landholders to protect biodiversity values, responsible bushland management, and strong evidence-based strategic and statutory planning that reflects the values our community places on biodiversity. As the Responsible Authority for most planning permits that involve removal of native vegetation within the municipality, Manningham City Council has detailed insights into the implementation and implications of the State Government’s current native vegetation clearing regulations. Thus, Council is well-placed to provide advice to the State Government regarding the proposed improvements resulting from the review of the current native vegetation clearing regulations.

## 2. General comments regarding the review

Manningham City Council (MCC) generally is supportive of proposed improvements resulting from the review of the Native Vegetation Clearing Regulations presented in the consultation paper released on Thursday 17<sup>th</sup> March 2016. The extent of consultation undertaken during development of the paper has resulted in some proposed improvements that will provide a much improved system of native vegetation clearing regulations compared to the current regulations, provided the implementation strategy is developed thoroughly, carefully and collaboratively. Council is pleased the review bases proposed improvements on the characteristics of a good regulatory system. Generally, MCC considers the proposed improvements in the six key themes will result in improvement to the regulations and awaits more detail of the implementation strategy.

Manningham City Council is among the key users of current and future regulations and is keen to see that the implementation process of any reforms also is improved. Also, it is important that the native vegetation clearing regulations interact cohesively and productively with key legislation and policies including *Protecting Victoria's Environment – Biodiversity 2036* (Biodiversity Strategy), the *Flora and Fauna Guarantee Act 1988* (FFG Act) and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Council notes that the review of the native vegetation clearing regulations focuses more on efficiency and cost effectiveness than on protection of Victoria's biodiversity, and so may not be consistent with principles identified in numerous Federal and Victorian Government legislation, policies and agreements, including:

- Intergovernmental Agreement on the Environment, signed in October 1990 by the Heads of Government of the Commonwealth, States and Territories of Australia, and representatives of Local Government in Australia, to provide a mechanism by which to facilitate better protection of the environment, including a cooperative national approach.
- National Framework for the Management and Monitoring of Australia's Native Vegetation 2001 Natural Resource Management Ministerial Council
- Australia's Biodiversity Conservation Strategy 2010–2030, prepared by the Natural Resource Management Ministerial Council
- The *Environment Protection Act 1970* (VIC)
- EPBC Act - Land Clearance - a Listed Key Threatening Processes
- FFG Act 1988 Action Statement No. 192 - Loss of hollow bearing trees from Victorian native forests
- Assessing the Effectiveness of Local Government Planning Scheme Controls in Protecting Native Vegetation in the Port Phillip & Western Port Region (2009) Report by Parson Brinkerhoff Australia Pty Ltd for Port Phillip and Westernport CMA.

The largely economic approach to native vegetation clearing presented in the current review does not adequately recognise that native vegetation is diverse, dynamic and not readily

assessed by the lay person. This approach over-simplifies a complex system and, in doing so, undermines the values that native vegetation provides to the community and the value that community should (or does) place on native vegetation. Notably, the proposed improvements may not enable successful implementation of the goals and priorities of the State Government's *'Protecting Victoria's Environment – Biodiversity 2036'*. Further, there is a risk that local biodiversity values within Manningham may be eroded. Without adequate funding and commitment to implementing the proposed improvements identified in the consultation paper, there is a great risk that the State Government of Victoria will continue to generate a net loss of native vegetation – and biodiversity - across the Victorian landscape.

Manningham City Council is willing to work with the State Government – including in a small working group involving Local Government officers - to facilitate the implementation of effective native vegetation clearing regulations and help achieve no net loss of native vegetation across the Victorian landscape. Council is able to assist with a range of tasks, including the development of the implementation strategy, formulation of the guidance document(s), development of an effective enforcement and compliance strategy, consideration of how to assess impacts of applications on local biodiversity, and review of the relevant exemptions in order to ensure the regulations can be implemented – ultimately, by Council – in an efficient way.

### **3. Comments relating to the key themes identified in the Review of the Native Vegetation Clearing Regulations**

#### **1. Native vegetation clearing policy**

It is vital the guidance material that is developed be included in one document and that the document be an incorporated document under Cl. 52.17 Native Vegetation of the Victorian Planning Schemes. Further, it is important that the State Government support municipal Councils to develop local overlays that will ensure local biodiversity priorities can be prioritised and protected.

#### **2. Permit process and decision making**

Protection of large, old and/or hollow trees is critically important for protection of Victoria's biodiversity. The contribution such trees make to Victoria's (and Manningham City Council's) biodiversity is significant and it is critical this contribution is recognised through adequate planning controls under Clause 52.17. Proposed improvement 15 seeks to address this to some extent but additional improvements are required. The proposed improvements do not adequately protect significant trees.

Reducing the threshold for higher risk-based pathway applications to 0.5ha or 7 trees is supported, however Council has identified that a lower threshold may be more appropriate in some areas of the municipality where vegetation quality or tree density is higher. Council is supportive of several aspects of the existing Biodiversity Assessment Handbook ('Handbook'), such as that subdivision to <0.4ha results in all native vegetation being considered lost. The inclusions should remain in the definitions. The method for calculating vegetation loss within defensible space is appropriate for treed vegetation, largely resulting in considering 100% loss in defensible space.

#### **3. Biodiversity information tools used in decision making and offset rules**

Council generally is supportive of the proposed improvements relating to the biodiversity information tools used in decision-making and offset rules, however the following points are critical if these tools are to be relied upon to: determine what constitutes significant biodiversity; determine what is a risk to that significant biodiversity; guide effective, fair and responsible decision-making relating to planning applications to remove native vegetation; and defend any decisions made using the tools.

- The tools need to be based upon the best information available – currently, significant (and very knowledgeable) groups within our community and within Local Government know that the Victorian Biodiversity Atlas (VBA) is plagued by gross

inaccuracies and is slow to incorporate data. Some data therefore are not submitted to the VBA. This severely compromises the quality of the information within the VBA and results in models that are not based on the best information and so are not sufficiently accurate to be used for decision-making purposes.

- A repeatable and documented process must be established as a result of this review which enables and requires DELWP to officially capture the situations where information in the tools is shown to be inaccurate and to provide a timely written response to Responsible Authorities documenting that the specific information in question is to be ignored (false positives) or utilised (false negatives).

#### **4. Offset delivery**

Council recognises that opening the offset market to the catchment scale was introduced to increase market functionality, however the impact on regional biodiversity has been significant. Since the introduction of the current Clause 52.17, most offsets for trees and other vegetation lost within Manningham have been achieved in grasslands in the western suburbs of Melbourne. This has resulted in a significant loss of vegetation and little effective offsetting of those losses within the municipality (or region). Therefore, Manningham City Council strongly recommends that bioregional offsetting be reintroduced.

#### **5. Exemptions**

Planning Schemes are public documents and therefore must be expected to be read by interested members of the public. Accordingly, guidance relating to exemptions under Cl. 52.17 should be provided as an incorporated document (or within the revised Biodiversity Assessment Handbook, already an incorporated document). The guidance is as much required by the general public (who generally do not seek advice on how to interpret exemptions) as it is by professional planners and others. The guidance will assist applicants and Council officers assessing applications, by providing clear guidance on the application of exemptions for their intended purpose.

The review of the Native Vegetation Clearing Regulations ideally would have incorporated a thorough review of the exemptions associated with Cl. 52.17 Native Vegetation. Specific exemptions under Cl. 52.17 that need urgent review and guidance include: emergency works, fencing, lopping/pruning and vehicle access from public roads. A prominent note appended to Cl. 52.17 should alert readers to check for local overlays that extinguish these exemptions in specified circumstances and areas.

Importantly, the interactions of the Clause 52.48 Bushfire Exemptions on native vegetation require serious consideration. Whilst Council understands a review of the Cl. 52.48 exemptions beyond the extent of the current review, the extensive impact on native vegetation from the bushfire exemptions cannot be ignored. Most critically, exemptions (Cl. 52.17 and/or Cl. 52.48) seriously compromise any accurate assessment of the contribution any permitted clearing of vegetation makes to Victoria's biodiversity, compromising the accuracy of decisions made by Council relating to applications to remove native vegetation.



## **6. Compliance and enforcement**

There is much potential for improvement in this key theme, including funding, training, guidance, and departmental support and leadership.

## **4. Assessment of Proposed Improvements**

### **1. Clarify that the primary focus of the regulations is to ensure avoidance of native vegetation removal where possible**

Manningham City Council supports the application of the avoidance and minimisation principle for all applications. This ensures an equitable and consistent process.

Council requests the phrase ‘where possible’ is removed or that guidance is provided on what would equate to ‘not possible’. What is the definition of ‘where possible’? If the primary focus of the regulations is to ensure avoidance of native vegetation removal, such ambiguity must be removed either through rewording the improvement or providing detailed guidance.

The review document retains reference to ‘significant contribution to Victoria’s biodiversity’, adopted from the existing native vegetation permitted clearing regulations. This is concerning as it remains unclear as to how the ‘contribution’ to Victoria’s biodiversity is measured. The wording ‘significant contribution to Victoria’s biodiversity’ should be removed, or if this is not possible then the phrase must be clarified. It is not clear from the proposed improvements what constitutes a ‘significant’ contribution to Victoria’s biodiversity, what factors are considered in setting the threshold of what is considered ‘significant’, and how contribution would be measured. Based on the current system, within some Local Government areas including Manningham, little vegetation is considered to make a ‘significant’ contribution. If this approach continued, very few applications would require the avoidance of native vegetation. Clearly, this would not be an acceptable outcome for Manningham City Council and would (collectively) result in a significant impact on Victoria’s biodiversity.

How will the assessment of the ‘contribution to Victoria’s biodiversity’ be reflected in the proposed new system that is not based on ‘risk’ to Victoria’s biodiversity?

Is this improvement suggesting the 3-step approach only applies if the vegetation proposed to be removed makes a significant contribution to Victoria’s biodiversity? The wording of such statements is critical.

The principles of avoidance and minimisation need to be extended to ‘other matters’ such as local biodiversity matters, erosion, salinity and environmental landscape values to ensure that all applications are considered holistically. Such ‘other matters’ combine to impact on Manningham’s and Victoria’s biodiversity.

### **2. Consolidate comprehensive policy guidance for native vegetation removal**

Manningham City Council strongly supports this proposed improvement. There is a lack of guidance about how to consider ‘other matters’ under Cl. 52.17. Guidance material is critical

for effective, fair and consistent implementation of the Native Vegetation Clearing Regulations.

Other matters should include:

- ‘Cumulative impacts’ must be another ‘other matter’ in 52.17 e.g. cumulative impacts on native vegetation, erosion, salinity.
  - Cumulative impacts relate directly to significant impacts on Victoria’s biodiversity.
- *Flora and Fauna Guarantee Act 1988* (FFG Act) threatening processes that relate to native vegetation removal (i.e. loss of hollow-bearing trees).

Manningham City Council requests that guidance material be developed to assist Local Government to consider (and assess) ‘other matters’, including specific guidance about how to assess the cumulative impacts of small scale vegetation clearing. For example, the removal of one or two trees might not directly cause erosion, salinity or environmental landscape issues, but the cumulative effect of hundreds of applications to remove one or two trees may well result in such issues.

Determination of what vegetation clearing constitutes significant impact on species’ habitat is dependent on regular updates of maps (species habitat maps). It is critical that species habitat maps are updated regularly – ideally, the system would be live so permitted vegetation clearance from a species’ habitat was removed from the balance habitat to reveal a live, remaining extent of habitat. This would be valuable, however limited by a lack of knowledge of the extent and location of exempt and unpermitted vegetation clearance within species habitat. A (online) register of vegetation cleared under the exemptions would facilitate the tracking of remaining species habitat.

To facilitate consistent interpretation and application of the exemptions, the updated Biodiversity Assessment Handbook, or an alternative but incorporated document, would include the ‘guidance’. There also should be a solid commitment from the Department to regular updates (6-monthly, or annually) and the method in which they will undertake this, preferably including a panel/reference group with environmental, industry and Council representatives. Amendments to the Handbook could include ‘planning note’ style updates to ensure all information remains in one consolidated location. Notification of amendments to the Handbook must be communicated to Local Government, the general public and other stakeholders via the DELWP website and other communication channels.

### **3. Develop guidance to support strategic planning relating to native vegetation protection and management**

Manningham City Council acknowledges it is important to get the system right and is confident improvements can be achieved if the system is developed in consultation with Local Government. This is particularly important as Local Government is the end user.

Council requests that the State Government acknowledge and support the development of local overlays that protect local and regional biodiversity. In particular, Section 12 of the SPPFs could be updated in consultation with Local Government to bring it up to date and provide a more supportive framework for the development of local policies relating to biodiversity protection.

The process of planning scheme amendments needs to be simplified to facilitate Local Governments setting local biodiversity priorities. As stated on page 16 of the Consultation Paper, ‘Many Councils also stated that the undertaking and updating their strategic plans to protect and conserve biodiversity was prohibitively expensive and not a priority.’ Therefore, as well as providing guidance, DELWP needs to support local Councils by facilitating processes that help address these issues – such as simplifying and reducing resources required to implement the process of planning scheme amendments.

Council recommends a new streamlined approval process to facilitate development and implementation of Environmental Significance Overlays. Alternatively, additional schedules like ‘local matters’ could be introduced for implementation under Cl. 52.17.

#### **4. Improve monitoring to determine if the regulations are achieving their objective and make this information publicly available**

Manningham City Council strongly supports a state-wide system which records and monitors all vegetation that is avoided or removed and offset. In addition, Council strongly recommends such a system incorporates tracking vegetation removed under the exemptions (see below).

It is critical that a mechanism be introduced to monitor native vegetation cleared under clearing exemptions. A process for tracking exempt vegetation clearance is fundamental to success of the permitted clearing regulations – currently, there is no way to regulate exempt vegetation removal however, a simple online system or aerial imagery analysis could be useful. An online register system could be developed whereby people seeking to remove vegetation under exemptions would enter the address, location and extent of the clearing with no (or limited, almost instant) approvals process. This would prevent enforcement action erroneously being taken against legitimately exempt vegetation removal and would provide better opportunities to track the extent of threatened species habitat cleared, including that cleared under the exemptions. In this way, such a system would assist monitoring the implementation of the regulations and whether the regulations are achieving their objectives.

Council is supportive of improved monitoring but questions how this proposed improvement will be implemented. Council is concerned that the responsibility and economic/resource burden of achieving this (necessary) improvement will be transferred to Local Government. Council supports the State setting up a monitoring system and implementing it and acknowledges that MCC does not have the resources to set up or run a monitoring system, nor the ability to collect data about vegetation removal.

In particular, Council questions:

Who will fund improved monitoring? Currently, the reporting of vegetation loss falls on Local Government and there is little capacity for Local Government to increase monitoring efforts although there is widespread acceptance that there is a great need for improved monitoring. Increased funding and other support from the State may generate an improved system of monitoring using existing local government structures, processes and mechanisms. For example, there is already a tracking system for permits; this could be retrofitted reasonably simply to enable Council's statutory planners to input permitted vegetation loss to facilitate tracking permitted (and, therefore, exempt) vegetation loss. However, MCC could not resource this additional burden without assistance from the State. Is it the expectation that local government will undertake the monitoring or will DELWP take leadership?

Manningham City Council is concerned that the requirement for the monitoring or reporting of clearing under exemptions may be expected of Local Government, resulting in a prohibitive resource burden on Council operating in an increasingly constrained economic environment. Currently, residents are not required to notify Councils (and/or the State) when they clear native vegetation under exemptions, thus Local Government (and/or the State) do not have any knowledge of what vegetation is being cleared under exemptions. Such information could be estimated from aerial/satellite imagery (although complicated by unpermitted/illegal clearing), however Local Government is not resourced to undertake such analyses. Council considers aerial or satellite imagery analysis should be undertaken as part of monitoring efforts. Aerial or satellite imagery analysis needs to be funded by State Government owing to the high (prohibitive, in many Local Governments) cost of obtaining current imagery and analysing images, particularly in a rate-capping environment. The State Government should be tracking changes revealed by imagery analysis along with tracking the permits. This type of analysis can be broken down into any land tenure for further investigation, for example Local Government Area, Bioregion, CMA, etc. Such analysis also could be a tool to trigger enforcement action or investigation for substantial vegetation clearance.

The State could support Local Government to assist with monitoring efforts by forming a dedicated support team, particularly in the first 18 months of implementation of the reformed native vegetation clearing regulations. The department could offer workshops, training and grant-funded positions to assist Councils.

## **5. Reduce the low risk-based pathway threshold**

Manningham City Council generally is supportive of a reduction in the threshold for the low-risk based pathway, however it must be explicit that Council can refuse low risk-based pathway applications and, importantly, on what grounds Councils could refuse such applications under Cl. 52.17.

Council is concerned that the contribution (and the impact of cumulative losses) of locally significant biodiversity on the State's biodiversity has not been adequately factored into determination of risk-based pathways.

The suggested threshold of 0.5ha or seven trees is a significant improvement over the current threshold, however Council has identified that a 0.2ha threshold may be more appropriate in forest or woodland vegetation types where proposals to remove 0.2ha of native vegetation could represent removal of a significant number of trees. Thus, the thresholds may need to relate more closely to site-specific conditions such as vegetation community or local biodiversity attributes. Further, the threshold should consider other factors that may present a higher 'risk' to the State's biodiversity, for example: large old trees, threatened vegetation communities, etc.

Council reiterates that it is vital that applications for a permit under Cl. 52.17 with reduced low-risk thresholds can be refused by Council if an application does not address avoidance and minimisation principles or is not consistent with DELWP guidance about 'other matters'.

## **6. Replace the native vegetation location risk map with an updated map of highly localised habitats**

Manningham City Council is very supportive of the removal of the location risk map.

In relation to Biodiversity Tools, including the native vegetation location risk map and highly localised habitat maps, Council strongly considers the following points are critical if these tools are to be relied upon to determine what constitutes significant biodiversity; determine what is a risk to that significant biodiversity; guide effective, fair and responsible decision-making relating to applications to remove native vegetation; and defend any decisions made using the tools, then:

- The tools need to be based upon the best information available - the quality of the information within the VBA is seriously compromised, which results in models that are not based on the best information and so are not sufficiently accurate.
- A repeatable and documented process must be established as a result of this review which enables and requires DELWP to officially capture the situations where information in the tools is shown to be inaccurate and provide a timely written response to Responsible Authorities documenting that the specific information in question is to be ignored (false positives) or utilised (false negatives).

Council supports the use of highly localised habitats to a limited extent. However we are concerned that there are insufficient data relating to many rare or threatened species. We request that DELWP invest heavily in data collection/research efforts to gather more data for each rare or threatened species, prioritising species in areas of high vegetation clearance.

There is a critical and absolute need for improved resourcing to increase data submission and dataset curation/quality control, which are the bases for the maps (and therefore planning decisions). Council recommends that DELWP develop a new fast-tracked data entry system

or process. Many Councils, ecologists and other reliable sources have records of threatened species that have not been entered into the VBA/FIS and therefore are not currently informing DELWP biodiversity (risk, habitat, etc.) models. The current system for providing data to DELWP is time consuming and cumbersome. These data need to be entered simply and quickly and informing DELWP models in ‘real time’. Council requests development and publication of a schedule or commitment to regular (6-monthly/12-monthly) updates of the modelled data. Having a published schedule of timeframes and/or deadlines for submission of data for inclusion into these scheduled updates would allow Local Government and local community groups to prepare adequately for these data submissions.

Also, Council is concerned that replacing physical site-based biodiversity assessments conducted by qualified consultants with modelled biodiversity values will result in *less* data being collected and submitted to the VBA, which in turn will result in *less* understanding of highly localised habitats, thus more erroneous, deleterious planning decisions and increased impacts on species with highly localised habitats.

Highly localised habitats do not represent habitats for every threatened species. Therefore, focussing on highly localised habitats will not prevent impacts on other threatened species. Council considers it critical that threatened EVCs (at least endangered and vulnerable) are included in considerations of planning applications under Cl. 52.17. Threatened Communities of Flora & Fauna as listed under the FFG Act also could be considered.

## **7. Require an avoid and minimisation statement for all applications and consider this in decision making**

Manningham City Council supports the requirement for an avoidance and minimisation statement for all applications.

This proposed improvement needs a proper framework and written explanation to ensure worthwhile implementation and outcomes. Council recommends DELWP provide detailed guidance about what constitutes sufficient avoidance and minimisation. The Handbook needs to define the principle of avoid and minimise, and give guidance to assist Council officers assessing avoid and minimisation statements. This support and guidance for decision-making will be vital for consistent outcomes across the state. This could facilitate achieving proposed improvement 1.

The rationale for this proposed improvement refers to steps taken to avoid or minimise their impacts on Victoria’s biodiversity – it is vital that impacts on locally significant biodiversity are considered, as incremental losses to locally significant biodiversity manifest as gross impacts on the State’s biodiversity.

## **8. Require an offset strategy for all applications and consider this in decision-making**

Council strongly supports all applicants providing a strategy or description about how offset requirements will be satisfied. This proposed improvement will ensure applicants know up-front their future offset costs or land management requirements.

## **9. Change to two pathways, a 'lower assessment pathway' and a 'higher assessment pathway'**

Council strongly supports this proposed improvement as it will result in a simpler process for all applicants, depending on the thresholds set for each category. The Responsible Authority should have the ability to determine the assessment pathway based on site-based information.

## **10. Provide clearer guidance on when to refuse an application to remove native vegetation**

Council supports clearer guidance about when to refuse an application. There has been a lack of clarity from DELWP on how to consider 'other matters'. The current system is not driving effective environmental planning outcomes and needs to be improved, including through provision of clearer guidance.

Council's support for this proposed improvement depends on the definition of 'significant impact on Victoria's biodiversity'. It remains unclear how the significance of the contribution made by an area of native vegetation in Manningham to Victoria's biodiversity is calculated. It continues to be concerning that there are complex, untested hypotheses underpinning the assessment of contributions to Victoria's biodiversity. Indeed, incremental loss of native vegetation has a significant (catastrophic) impact on Victoria's biodiversity, yet is not considered in any way through the models or in decision-making under the current system. Assessing applications against the subject vegetation's contribution to Victoria's biodiversity is fraught and potentially misguided.

## **11. Include a decision guideline that allows Councils to consider locally important biodiversity when assessing applications**

Manningham City Council generally is supportive of the inclusion of a decision guideline that allows Councils to consider locally important biodiversity when assessing applications but seeks clarity on the following:

- What test or measure would be used to determine locally important biodiversity?
- How would this interact with local planning controls (namely overlays)?
- Could this be as simple as a dot point in the MSS or a specific tree protection policy?
- In the absence of scientific studies how would Council measure the impacts to local biodiversity?



The decision guideline needs to clearly articulate how local biodiversity of importance should be referenced in local planning scheme(s) to provide increased protection.

## **12. Allow habitat characteristic information collected at the site to be used to supplement the maps of a species habitat in the permit application process and for offset sites**

Council supports habitat data (e.g. hollows, logs, dead stags, foraging/nesting habitat, etc.) collected at the site being used as supplementary information for assessing permit applications and for determining offsets/offset sites. Regularly, suitable habitat for threatened species is discovered that is not reflected in the (modelled) species habitat maps.

Council considers there is a critical need to introduce mandatory standards to the ecological consulting industry. However, Council would not support changes that would exclude valuable data contributors that may not be ‘suitably qualified ecological consultants’, for example, Friends groups, Field Naturalists, local ‘experts’, or Council environment officers. Such contributors should be able to provide information that is able to be substantiated and verified either by the RA or an independent data review expert panel. Council does not support such information being collected solely by qualified consultant ecologists as this would favour those applicants who are able to afford expert ecologists.

This proposed improvement relates specifically to applications assessed under the proposed ‘low assessment pathway’ – the proposed improvement could link in/provide triggers for assessment of vegetation considered of high *local* significance that might otherwise not be assessed. It is important the system can operate to both increase and decrease habitat importance.

## **13. Increase the information available about the maps used in the regulations and improve their accessibility**

Manningham City Council is strongly supportive of this proposed improvement but welcomes more information on how this will be achieved. At a minimum, the information provided must include the methodology used to generate the models and the limitations of use. Transparency is vital for trust in the system and for the ability to challenge (and defend) the system. Models and assumptions – which are scientifically formulated - should be published in a peer-reviewed journal, as the peer-review process validates the scientific bases that *should* underpin the models.

#### **14. Place greater emphasis on key areas of habitat for dispersed species in decision-making and offset requirements**

Council is supportive but welcomes more information on how this will be achieved. In particular, Council requests clear guidance about how these data will be collected, who will collect these data and how they will influence decision-making.

Greater clarity is required regarding how ‘key areas of habitat’ are defined: what constitutes ‘key areas of habitat’?

Individual applications may not trigger specific offsets, however decision-making processes need to consider the cumulative impacts of vegetation/habitat loss on rare *and* threatened species. Some mechanism needs to be introduced to offset the impact of cumulative loss of habitat on rare and threatened species.

Section 3.2.5 specifically refers to EVCs – yet there is no mention of EVCs in proposed improvement 14 (including associated description or rationale). Council strongly recommends EVCs be included in this proposed improvement.

#### **15. Differentiate between the biodiversity value of scattered trees for use in decision making and offset requirement determination**

Manningham City Council is supportive of this proposed improvement but welcomes more information on how this will be achieved, including how to differentiate the biodiversity value of scattered trees in a way that will generate consistent interpretation and application, and appropriate and fair biodiversity and planning outcomes. Further, we request that it extends to all large and/or old trees. Currently an application to remove a small sapling is treated the same as an application to remove a large (and old) habitat tree. The current system easily allows large, old habitat trees (for example, those in excess of 100 years old) to be removed and ‘offset’ (though large, old habitat trees cannot truly be offset in General Biodiversity Equivalence Units, particularly when those units are purchased as grassland). Larger trees, particularly those of hollow bearing size and age, provide a much wider range of critical, irreplaceable ecosystem services than saplings. The removal of large, old trees must be carefully considered and there must be an explicit decision-making guideline that requires avoiding/minimising the removal of large and/or old trees.

Ecological Vegetation Class tree size benchmarks should be reintroduced as the benchmarks are a fully functional system that already exist and (generally) adequately account for tree size variation in different locations/EVCs. The benchmark system could be revised (if necessary) for use in the updated regulations. Different growth rates of different species still need to be considered (e.g. PPWPCMA Native Vegetation Plan).

Council requests the reintroduction of a separate offset option for scattered trees. Many Councils previously had success with the revegetation and protection offset table provided on page 57 of the Port Phillip and Westernport Native Vegetation Plan. This table leads to easy

calculations of first party offsets or for purchasing offsets through an over-the-counter scheme.

Applications assessed under the proposed higher assessment pathway would require provision of additional, detailed information. However, it is important that similarly detailed information can be required for 'low assessment pathway' applications that seek to remove native vegetation (including large, old trees) from areas of higher local significance.

## **16. Increase the use and functionality of the credit register**

Manningham City Council is supportive of this proposed improvement but welcomes more information on how this will be achieved.

Council requests that the offset tracking system be run and implemented by DELWP as Council does not have the resources to implement such a system.

## **17. Support the development of the market for low availability offsets**

Manningham City Council is supportive of this proposed improvement but welcomes more information on how this will be achieved. Council strongly supports first party offsets as they improve local biodiversity, (generally) reduce offsetting costs for permit holders and keep offsets in the local area. They also encourage increased custodianship and environmental stewardship through compulsory land management (via offset management plans).

Council requests that first party offsets for scattered trees or small patches of vegetation be made more simple and accessible. Council supports the reintroduction of a simple replanting or protection and replanting ratio.

Currently, Council is observing most native vegetation offsets being achieved well beyond the municipality – and beyond the relevant bioregions. Indeed, since the introduction of the permitted clearing regulations, most vegetation permitted to be removed within the Port Phillip and Westernport Catchment has been offset at a conservation reserve in Little River. This site, whilst undoubtedly important, has little-no environmental correlation with the area within Manningham from which the vegetation being offset was removed. Manningham City Council strongly recommends that offsets must be located within the same municipality or Bioregion to improve the accountability and ecological relevancy of offsets, achieve no net loss and to ensure the retention of local biodiversity dynamics and landscape heterogeneity.

It is important to recognise the significant contribution different broad vegetation types (and specific EVCs) make to Victoria's biodiversity. For offsetting to begin to redress impacts on the State's biodiversity, it is critical that offsets must reflect the ecological contribution of the vegetation permitted to be removed.

Offset options need to be extended to help Councils offer small-scale offsets, provided a minimum standard is met to avoid failed offset plantings which undermine the intent of the security and perpetuity of offsets. The following should be considered:

- Including a revegetation/replacement planting on-site offset option.
- On-title protection for offsets generated for removal of more than four trees.
- The intent of a market-based system is that supply is driven by demand – DELWP supporting market development is counter-intuitive, and may encourage the removal of threatened (i.e. high risk/low-availability) vegetation.

### **18. Require that all third-party offsets are registered on the credit register and meet its standards, including standards for securing the offset**

Manningham City Council is supportive of this proposed improvement but welcomes more information on how this will be achieved as this could generate bottlenecks in the system that slow down permit holders' ability to secure offsets and achieve permit compliance.

The cost of setting up and registering offsets on the Credit Register currently is expensive and may be prohibitive, acting as a disincentive to potential credit holders and impacting on market functionality.

A threshold could be added to this proposed improvement. For example, if one tree cleared generates an offset of five trees that are planted on a neighbour's property, the receiving site should be registered on the credit register but not necessarily subject to all the Credit Register standards. This may be based on extent of clearing or offset area/size thresholds.

### **19. Redesign the revegetation standards to ensure desirable revegetation can occur**

Council considers a redesign of the revegetation standards is vital and is strongly supportive of this proposed improvement.

Prior to 2013, under the previous regulations, many permit holders opted to achieve offsets on their own property (first-party offsets) to reduce costs, improve amenity, attract native wildlife, etc. The Biodiversity Assessment Handbook currently contains a series of offset rules that are too limiting and impractical. Examples of rules that need to be reviewed and improved to achieve better offset outcomes include:

- No offsets are permitted within 150 metres of a building (not limited to the subject site) and
- Any revegetation must be 2+ hectares.

Council suggests that the 150 metre requirement be removed or reduced significantly, with the suitability of offset sites to be determined by Council in conjunction with the CFA based on site-specific considerations. Council sees value in revegetation of a size less than two

hectares (e.g. planting along degraded creek corridors or to link remnant patches) and recommends that the minimum two hectare revegetation requirement be removed.

Council strongly recommends the reintroduction of the revegetation option for scattered trees but welcomes more information on the following:

- How would the proposed revegetation option(s) interact with General Biodiversity Equivalence Units?
- Would they be an alternative? Or calculated to convert somehow to GBEUs?
- Could this calculation be generated as an output of NVIM? Such a system could involve inputting a potential offset revegetation site and NVIM generating the credit in GBEUs.

There needs to be a simple process to convert from GBEU offset obligation to revegetation. Council considers it appropriate that thresholds may well apply, above which revegetation is not an option.

## **20. Create a framework for offsetting on Crown land**

Manningham City Council is supportive of this proposed improvement but welcomes more information on how this will be achieved, in particular around the notion of ‘additionality’.

The framework would need to be transparent and publicly available, such as inclusion of an interactive site where Crown offsets are mapped within public land and details of the management of these sites, over and above the standard management, is identified.

## **21. Formalise a set of exemption purposes and principles**

Manningham City Council strongly supports the clarification of exemptions so that vegetation removal under exemptions is minimised and justified. Council requests that the exemptions be reviewed and workshopped in conjunction with Local Government officers, who have direct understanding of the application and implications of the current exemptions and generally are responsible for communicating this information and providing advice to the public.

Council considers that new clearing under exemptions must be recorded. Given much of the clearing of native vegetation in the State occurs under exemptions (both under Cl. 52.17 and Cl. 52.48) (and therefore is not offset) this will provide a much clearer picture about the real state-wide biodiversity losses.

Although Council is supportive of tracking vegetation removed under exemptions, MCC requires details about how native vegetation clearances under exemptions will be recorded. Council does not have the resources to adequately track clearing under exemptions. Such a system would best be resourced and implemented by DELWP.

There is a critical need for further explanation/definition/guidance of the phrase ‘new footprint permanent clearing’.

## **22. Clarify wording of exemptions**

Manningham City Council strongly supports clarifying the wording of exemptions within Clause 52.17. We also suggest that this be accompanied by simple, easy to follow diagrams that can be used by people seeking to remove native vegetation under exemption(s).

Council considers there is a critical need to work through each of the exemptions, in conjunction with Local Government, and to workshop with Local Government potential interpretations and unintended implications of any ‘improved’ wording of exemptions.

In many municipalities, the most commonly used exemptions are the Clause 52.48 Bushfire Exemptions. These exemptions are very broad and the wording is ambiguous. Whilst Council acknowledges it is beyond the scope of the current review to consider exemptions under Cl. 52.48, the impact of the interactions of the Cl. 52.48 exemptions on the objectives of Cl. 52.17 and Victoria’s biodiversity is significant and warrants serious and urgent review.

Manningham City Council considers there is a need for an initial workshop with a stakeholder group (including relevant Local Government representatives) to consider the wording and rationale for each of the existing 30-plus Cl. 52.17 exemptions.

## **23. Provide guidance on the intent and application of exemptions**

Council supports this proposed improvement relating to the provision of guidance material about the intent and application of exemptions. We consider it vital that the Department ‘develop guidance material about the application and intent of the exemption to assist Councils and proponents.’ Critically, the Department needs to engage with Local Government to ensure guidance is targeted and useful. Therefore, we strongly recommend that DELWP works collaboratively with Councils to jointly develop this guidance material.

Council requests that the proposed guidance material also includes a checklist for consideration under Clause 52.17 (and Clause 52.48?), the *Flora and Fauna Guarantee Act* 1988 and the *Environmental Protection and Biodiversity Conservation Act* 1999. This will ensure people seeking to remove native vegetation under Cl. 52.17 exemption(s) do not inadvertently breach other environmental regulations while exercising an exemption.

Guidance needs to be incorporated in the VPPs. Guidance could be included in the Biodiversity Assessment Handbook, so it is within an already-incorporated document. The Biodiversity Assessment Handbook could be extended to include a specific chapter on exemptions.

## **24. Adopt a consistent approach to Agreements referenced in the exemptions**

Manningham City Council is supportive of this proposed improvement but welcomes more information on how a consistent approach to Agreements referenced in the exemptions will be adopted.

A detailed review of the existing exemptions is required, to assess what is working or not. The findings of the review would provide a solid basis for guidelines to developing agreements referenced in the exemptions in the future.

## **25. Develop a compliance and enforcement strategy**

Manningham City Council strongly advocates the need for the State to develop a compliance and enforcement strategy relating to the implementation of Cl. 52.17. The compliance and enforcement strategy needs to ensure DELWP have capacity and ability to pay for consultant's reports and be expert witness, as required.

Council recommends the *Planning and Environment Act 1987* (P&E Act) be amended to allow DELWP officers to be authorised officers for the purposes of enforcing compliance under Clauses 52.16 and 52.17 on private property.

Council recognises there is a need for increased leadership from DELWP relating to compliance and enforcement of Cl. 52.17. In particular:

- More enforcement/enforcement support and advice is required on the ground
- Monitoring compliance and investigating enforcement issues via use of aerial or satellite imagery and/or remote sensing.

There is an urgent need to address serious issues in the system where, in some cases, it is cheaper to pay Planning Infringement Notice(s) (PINs) than it is to be compliant with a planning permit, including for applications involving the removal of native vegetation under Cl. 52.17. Council strongly recommends that PINs/fines need to increase significantly to act as an adequate deterrent and encourage compliance.

## **26. Provide guidance and support materials for compliance and enforcement activities**

Council is supportive of this proposed improvement but welcomes more information on how this will be achieved.

It is vital that funding is provided for additional DELWP staff and resources to enable provision of guidance and support materials for compliance and enforcement activities. Currently, there is a critical shortage of guidance and support for Council, which is responsible for implementing compliance and enforcement activities under Cl. 52.17. It is

recommended that training is provided to Local Government compliance/enforcement staff with dedicated support resource staff at DELWP.

Adequate guidance, support and training for Local Government compliance/enforcement staff is critical to the success of the Native Vegetation Clearing Regulations. Council request that this proposed improvement is implemented immediately.

## **27. Improve information gathering for compliance and enforcement**

Manningham City Council is supportive of this proposed improvement but welcomes more information on how this will be achieved.

Council requests the State funds a specific Native Vegetation Enforcement Team within DELWP that is responsible for planning investigations relating to Cl. 52.17 and supporting Local Government in VCAT and the Magistrates Court, evidence gathering, public forums and submitting public notices on convictions relating to native vegetation enforcement to increase awareness of penalties associated with illegal native vegetation removal.

Dedicated (authorised) DELWP Enforcement Officers are required to provide consistent training to Local Government authorised officers on how to gather evidence and prepare for enforcement action in a replicable manner, to improve enforcement – and compliance - outcomes.

## **28. Promote co-regulatory support**

Council is supportive of this proposed improvement but welcomes more information on how this will be achieved.

This proposed improvement offers the opportunity to improve the interaction between Cl. 52.17, the FFG Act and the EPBC Act.

## **29. Review the overarching compliance and enforcement framework**

Council is supportive of this proposed improvement and welcomes a review of the overarching compliance and enforcement framework.

It is important that PINs/fines must be commensurate with the extent and condition of native vegetation that has been illegally cleared. Council considers it must be a mandatory requirement that vegetation cleared illegally is rehabilitated to the condition and extent of the vegetation prior to illegal clearing.