

Exemptions from requiring a planning permit to
remove, destroy or lop native vegetation

Guidance



December 2017

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1 Introduction

1.1 Purpose

This document provides guidance for the interpretation and application of the exemptions from requiring a planning permit to remove, destroy or lop native vegetation in the Victoria's planning system. This document is designed for use by:

- responsible authorities
- referral authorities
- those relying on exemptions to remove, lop or destroy native vegetation.

This document will be updated from time to time to ensure it provides effective guidance and reflects any changes in policy or law relating to native vegetation removal.

1.2 Scope

All Victorian planning schemes contain state standard particular provisions that require a planning permit to remove, destroy or lop native vegetation. For the purposes of this document, the term 'remove native vegetation' includes to lop or destroy native vegetation.

These planning scheme provisions also include exemptions from requiring a planning permit to remove native vegetation for certain uses, activities or development. This document provides guidance on the exemptions contained in:

- Clause 52.16 (Native Vegetation Precinct Plan)
- Clause 52.17 (Native Vegetation)

This document does not address:

- the exemptions from requiring a permit to remove vegetation in Clause 52.48 (Bushfire Protection)
- specific sites and exclusions affected locally by Clause 52.03 (Specific Sites and Exclusions)
- exemptions incorporated in the schedule to Clause 52.17 in planning schemes.

More information about Clause 52.48 can be found in *Advisory Note 39 – Amendment VC83 – Bushfire protection: Vegetation exemptions*. Please seek information about exemptions in other parts of the planning scheme from your local council planning department.

The guidance set out in this document is general in nature. It is not determinative, and may not account for all circumstances.

This document does not form part of any planning scheme, and as a guidance document, does not alter the effect or application of the exemptions or the relevant planning scheme. The authority responsible for administering and enforcing the relevant planning scheme remains responsible for considering the application of the exemptions and their scope based on the specific circumstances of an individual matter.

Some environmental overlays also include a requirement for a permit to remove vegetation, and have corresponding or similar exemptions to those in Clauses 52.16 and 52.17. Many of these exemptions have the same purpose and wording as those in Clause 52.16 and Clause 52.17. This document does not provide specific guidance on the exemptions within the overlays, however it may be useful to help understand corresponding exemptions in the following overlays:

- Environmental Significance Overlay

- Vegetation Protection Overlay
- Significant Landscape Overlay
- Erosion Protection Overlay
- Salinity Protection Overlay.

1.3 General purpose of exemptions

The exemptions in Clauses 52.16 and 52.17 provide for the removal of native vegetation for a range of activities, uses and development without needing a planning permit. Exemptions ensure that the provisions that control the removal of native vegetation function well by:

- allowing for the maintenance of areas where native vegetation has previously been removed
- ensuring activities can occur for public safety
- clarifying certain rights to use land that involves the removal of native vegetation
- allowing access to an approval process outside the Victorian planning system that implements the objectives of Victoria's policy for the removal of native vegetation
- avoiding duplicative processes where the removal of native vegetation is approved under a separate Act or approval process
- ensuring activities for land management and biodiversity improvements can occur
- allowing removal of native vegetation where the costs of obtaining a planning permit would outweigh the cost to the environment of the native vegetation being removed.

1.4 Best practice when relying on exemptions

Where a landholder, landowner or land manager removes native vegetation by relying on an exemption in either Clause 52.16 or 52.17, they are responsible for complying with the relevant planning scheme requirements. Steps that those relying on exemptions should undertake include:

1. Determine the purpose, location and extent of the proposed native vegetation removal.
2. Check what planning controls apply to the land, including zones and overlays or local provisions that may require a permit for the proposed use, activity or development.
3. If unsure, check with the local council planning department to confirm if an exemption applies to the proposed removal of native vegetation under all relevant planning controls.
4. Use this guidance document to help understand the exemption purpose and where it might apply.
5. Comply with any other approval processes referenced in the exemption (e.g. in the road safety exemption).
6. Consider any property law requirements that may apply. This may include the need to get consent from an adjacent landholder or land manager to remove native vegetation on their land, where the exempt activity is not on your property.
7. Comply with any conditions or requirements of the relevant exemption, such as:
 - only removing native vegetation to the minimum extent necessary (see section 1.5 for more information)
 - removing native vegetation within the exemption limit.
8. Keep records of native vegetation removal to substantiate that an exemption has been relied upon.

9. Ensure compliance with any other regulatory requirements relating to the activity, use or development, such as:
- Flora and Fauna Guarantee Act 1988 (Victoria)
 - Environment Protection and Biodiversity Conservation Act 1999 (Australia).

1.5 Minimising removing native vegetation when relying on exemptions

To ensure that exemptions from requiring a permit to remove native vegetation have minimal environment impacts most exemptions explicitly require that the native vegetation removal is to the minimum extent necessary. A condition of relying on these exemptions to remove native vegetation is that the removal is minimised. To achieve this, consider the following:

- exemptions must be relied upon sparingly. Consider using one exemption to meet multiple objectives. For example, an access track can also be a fuel break.
- any limits for native vegetation removal specified in an exemption are maximum amount, and it is not expected that native vegetation should necessarily be removed up to the limit. The onus is on those relying on the exemption to only remove that vegetation necessary to undertake the activity, use or development.
- only remove native vegetation for the purpose specified in the exemption. For example, native vegetation can only be removed along a fenceline for the construction or maintenance of that fence, within the limits specified in the exemption. Then within those limits only remove the native vegetation that will enable the actual maintenance or construction of the fence.

Practical approaches to minimising removing native vegetation

Before relying on an exemption, check if there are any ways to undertake the activity without removing any native vegetation. If native vegetation removal is still required, it must be minimised by considering:

- locate activities, use or development in areas with no or little native vegetation
- design the activity or development to minimise the impact footprint
- build upward instead of outward (i.e. multi-storey rather than single storey)
- place buildings close to the property entrance or close together to minimise the length of roads or pathways
- place infrastructure underground by boring instead of open trenching, or place it underneath driveways or pathways
- use a removal method that causes minimal impact on native vegetation. Generally using hand held tools rather than machinery or pesticides minimises impacts.

Focus of minimising

The term ‘to the minimum extent necessary’ relates to both the area of native vegetation removed, and minimising the impacts of the removal of native vegetation on biodiversity and the other values of the native vegetation. For example, a small area of native vegetation removal is proposed, but it is important habitat for a threatened species, or could cause erosion around a creek, so therefore this native vegetation removal should be minimised. When relying on exemptions focus minimising the impact of the removal of native vegetation on the following values. See <http://maps.biodiversity.vic.gov.au/viewer/?viewer=NatureKit> and <https://nvim.delwp.vic.gov.au/> for the maps referenced below:

- large, intact or high quality areas of native vegetation.
- native vegetation that has higher condition and strategic biodiversity value scores.
 - a condition score above 0.6 indicates the native vegetation is very good condition (See the *Native vegetation condition map*)

- a strategic biodiversity value score above 0.8 means the site is very important for Victoria’s biodiversity from a statewide perspective (See the *Strategic biodiversity values map*)
- large or hollow-bearing native trees, including areas within 15 metres of the tree trunk. Large trees with hollows usually have more biodiversity value than smaller trees without hollows.
- highly localised habitats for rare and threatened species, and important habitat for dispersed rare or threatened species, according to the *Habitat importance maps*.

In addition, minimise the removal of the native vegetation in the following locations:

- 30 metres from a waterway
- land with a slope greater than 20 per cent
- where salinity or erosion risk have been identified
- where the local council has identified important landscape values, such as areas providing visual amenity
- where Aboriginal cultural values have been identified. There may be requirements under the *Aboriginal Cultural Heritage Act 2006* that prevent or control the removal of native vegetation.

1.6 Common terms

This section describes terms commonly used in many exemptions. Where a term has been defined below, it will not be defined in the specific exemption guidance later in this document. See also Clauses 72 to 75 of your planning schemes for defined General terms and Land use terms.

Term	Definition
Agricultural production	Defined in Clause 72 of all planning schemes as: Any form of primary production of renewable commodities. It does not include Stone extraction, Mineral extraction, or timber production from native forest.
Agriculture	Defined in Clause 74 of all planning schemes as: Land used to: (a) propagate, cultivate or harvest plants, including cereals, flowers, fruit, seeds, trees, turf, and vegetables; (b) keep, breed, board, or train animals, including livestock, and birds; or (c) propagate, cultivate, rear, or harvest living resources of the sea or inland waters. Note that this includes timber production.
Building	Defined in section 3 of the <i>Planning and Environment Act 1987</i> as: Including: (a) a structure and part of a building or a structure; and (b) fences, walls, out-buildings, service installations and other appurtenances of a building; and (c) a boat or a pontoon which is permanently moored or fixed to land.
Contiguous land	Contiguous refers to land adjoining or having a common boundary.
Dwelling	Defined in Clause 74 of all planning schemes as: A building used as a self-contained residence which must include: (a) a kitchen sink; (b) food preparation facilities; (c) a bath or shower; and (d) a closet pan and wash basin. It includes out-buildings and works normal to a dwelling.
Five-year period	A five-year period is as any period of five consecutive years. For example, 2 June 1990 to 1 June 1995, or 15 September 2002 to 14 September 2007.

Term	Definition
	This concept appears in several exemptions to limit the amount of native vegetation that may be removed in any five-year period.
Lot	Defined in Clause 72 of all planning schemes as: A part (consisting of one or more pieces) of any land (except a road, a reserve, or common property) shown on a plan, which can be disposed of separately and includes a unit or accessory unit on a registered plan of strata subdivision and a lot or accessory lot on a registered cluster plan.
Maintenance	Maintenance is routine and on-going, prevents asset deterioration, and conserves the state of the asset as near as possible to its original condition. Maintenance does not include an expansion of an asset's footprint and should not involve the removal of large trees.
Owner (including Ownership)	Defined in the <i>Planning and Environment Act 1987</i> as: <ul style="list-style-type: none"> (a) in relation to land which has been alienated in fee by the Crown and is under the operation of the <i>Transfer of Land Act 1958</i> (other than land in an identified folio under that Act), means the person who is registered or entitled to be registered as proprietor, or the persons who are registered or entitled to be registered as proprietors, of an estate in fee simple in the land; and (b) in relation to land which has been alienated in fee by the Crown and is land in an identified folio under the <i>Transfer of Land Act 1958</i> or land not under the operation of the <i>Transfer of Land Act 1958</i>, means the person who is the owner, or the persons who are the owners, of the fee or equity of redemption; and (c) in relation to Crown land reserved under the <i>Crown Land (Reserves) Act 1978</i> and managed or controlled by a committee of management, means— <ul style="list-style-type: none"> (i) in Part 3, if the land is agreement land within the meaning of the <i>Traditional Owner Settlement Act 2010</i>, each of the following— <ul style="list-style-type: none"> a. the traditional owner group entity within the meaning of <i>Traditional Owner Settlement Act 2010</i> for the land; b. the Minister administering the <i>Crown Land (Reserves) Act 1978</i>; (ii) in any other case, the Minister administering the <i>Crown Land (Reserves) Act 1978</i>; and (d) in relation to any other Crown land, means— <ul style="list-style-type: none"> (i) in Part 3, if the land is agreement land within the meaning of the <i>Traditional Owner Settlement Act 2010</i>, each of the following— <ul style="list-style-type: none"> a. the traditional owner group entity within the meaning of <i>Traditional Owner Settlement Act 2010</i> for the land; b. the Minister or public authority that manages or controls the land; (ii) in any other case, the Minister or public authority that manages or controls the land.
Outermost point	The outermost point is the edge of a building and includes anything attached to the building, including eaves, verandas, pergolas, awnings and the like.
Public authority	Defined in section 3 of the <i>Planning and Environment Act 1987</i> as: A body established for a public purpose by or under any Act but does not include a municipal council.
Roadside	Defined in section 3 of the <i>Road Management Act 2004</i> as: Any land (estate, interest, easement, servitude, privilege or right) that is within the boundaries of a road (other than the shoulders of the road) which is not a roadway or a pathway and includes the land on which any vehicle crossing or pathway which connects from a roadway or pathway on a road to other land has been constructed. Any nature strip, forest, bushland, grassland or landscaped area within the road reserve can be considered to be roadside.
Secretary to DELWP	The Secretary to DELWP as constituted under Part 2 of the <i>Conservation, Forests and Lands Act 1987</i> is a body corporate. DELWP staff can be delegated to act as the Secretary to DELWP.
Trunk diameter	Trunk diameter means the diameter of the main trunk of a tree, measured over bark at 1.3 metres above ground level. In the case of multi-trunked trees, the diameter of the largest trunk is

Term	Definition
	measured.
Use	Defined in section 3 of the <i>Planning and Environment Act 1987</i> as: In relation to land includes use or proposed use for the purpose for which the land has been or is being or may be developed.
Works	Defined in section 3 of the <i>Planning and Environment Act 1987</i> as: Includes any change to the natural or existing condition or topography of land including the removal, destruction or lopping of trees and the removal of vegetation or topsoil.

2 Exemptions guidance

This section includes specific information about the interpretation, purpose and application of each exemption in Clause 52.17. It does not explain and define all wording in every exemption.

Not all the Clause 52.17 exemptions are included in Clause 52.16. Refer to the Clause 52.16-8 for the full list of exemptions included in Clause 52.16. Some Clause 52.16 exemptions have different purposes, wording and application to the corresponding exemption in Clause 52.17 (e.g. Regrowth). These differences are explained for each relevant exemption.

2.1 Conservation work

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the carrying out of conservation work:
 - which provides an overall improvement for biodiversity; and
 - with written agreement of the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*).

The purpose of this exemption is to not require a permit to remove native vegetation where the removal is required to do work that will clearly improve outcomes for biodiversity.

Written agreement from the Secretary to DELWP is required in order to rely on this exemption to remove native vegetation. The Secretary to DELWP will provide written agreement based on the following criteria:

1. The primary purpose of the work is for biodiversity conservation.
2. Steps are taken to avoid and minimise impacts on native vegetation when undertaking the work.
3. A comparison assessment shows that the losses to biodiversity due to the removal of native vegetation are outweighed by the expected improvements to biodiversity due to the work. The assessment should consider impacts on the values of native vegetation, and the information used to measure these values, described in Section 3 of the *Guidelines for the removal, destruction or lopping of native vegetation*. The assessment should include:
 - a. An estimate of the losses to biodiversity due to the removal of native vegetation
 - b. An estimate of the improvements to biodiversity due to the work, including any expected improvement to:
 - i. native vegetation condition and extent
 - ii. outcomes for rare or threatened species
 - iii. ecosystem function, and the improvements that will flow from this to biodiversity.
4. Monitoring will be undertaken to ensure the objectives of the conservation work are being achieved.

5. There is a management plan for the works that explains how they will be undertaken.

Based on the above criteria the Secretary to DELWP may provide written agreement for all or for part of the native vegetation removal proposed to rely on this exemption.

2.2 Crown land

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to manage Crown land:
 - by or on behalf of the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*), or Parks Victoria, and in accordance with the *Procedure for the removal, destruction or lopping of native vegetation on Crown land*; or
 - with written permission from the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*).

This exemption comprises two separate parts, each with a specific purpose:

1. The first part applies to native vegetation removal on Crown land that is undertaken by, or on behalf of DELWP or Parks Victoria. To rely on this exemption to remove native vegetation, the removal must be in accordance with the *Procedure for the removal, destruction or lopping of native vegetation on Crown land* available on DELWP's website. Organisations or individuals other than DELWP or Parks Victoria cannot rely on this part of the exemption to remove native vegetation on Crown land.
2. The second part applies to parties who have sought and obtained written permission from the Secretary to DELWP to remove native vegetation.

2.3 Dead vegetation

- Dead native vegetation.
This exemption does not apply to a standing dead tree with a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level.

The purpose of this exemption is to not require a permit to remove small dead trees and fallen timber, while still requiring a permit to remove large dead trees, which have higher biodiversity values, such as hollows for birds and animals to live in.

Careful consideration must be given to native vegetation recently impacted by natural events such as fire or flood, as it may appear dead but may recover after a period of time through vegetative regeneration i.e. re-sprout from its branches or roots.

2.4 Emergency works

- Native vegetation that is to be removed, destroyed or lopped:
 - in an emergency by, or on behalf of, a public authority or municipal council to create an emergency access associated with emergency works; or
 - where it presents an immediate risk of personal injury or damage to property. Only that part of the vegetation that presents the immediate risk may be removed, destroyed or lopped under this exemption.

This exemption comprises two separate parts, each with a specific purpose.

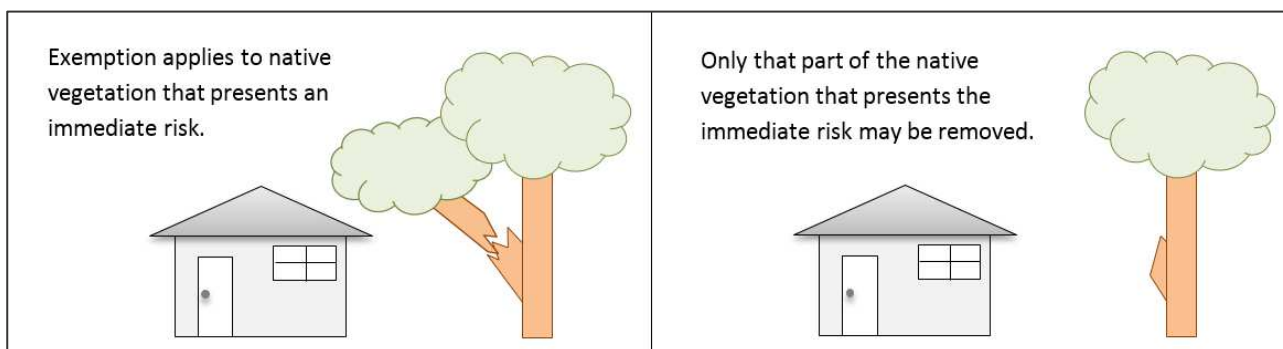
1. The first part of this exemption enables a public authority or municipal council, or those acting on their behalf, to remove any native vegetation required to gain emergency access at the time of an emergency, without the need to obtain a planning permit.

This exemption is not for the creation of access to prepare for an emergency, or after an emergency has occurred and the immediate threat has passed. Examples of when emergency access is required includes traffic accidents, a burst water main or a bushfire.

2. The second part of the exemption enables the removal any native vegetation that presents an immediate risk of personal injury or damage to property (e.g. a building) without a permit. For the risk to be considered immediate, the only option to manage the risk is by removing native vegetation within a shorter timeframe than it would take to apply for and be issued with a permit for its removal.

This exemption does not apply to native vegetation that has the potential to cause personal injury or property damage in the longer term. If future injury or damage from native vegetation is a concern, a planning permit can be sought to remove it.

Where practical, a qualified arborist should assess whether the native vegetation presents an immediate risk of limb or trunk failure. Where other means exist to address the risk, the exemption should not be relied on.



2.5 Existing buildings

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the use or maintenance of a building constructed in accordance with a planning permit or building permit issued before 15 September 2008.

This exemption does not apply to:

- the operation or maintenance of a fence; or
- native vegetation located more than 10 metres from the outermost point of the building.

The purpose of this exemption is to not require a permit for the removal of native vegetation necessary to allow for the use or maintenance of an existing building. The exemption only applies to buildings that were constructed in accordance with a planning permit or building permit issued before 15 September 2008.

The 10-metre limit applies from the top of canopy trees to the ground cover. If 10 metres from the outermost point of the building is within the trunk of a tree, the entire tree may be removed, if the removal is necessary to use or maintain the building. The lopping of branches should be considered prior to the removal of the entire tree.

Refer to the Fences exemption for native vegetation removal allowed for the operation or maintenance of a fence.

2.6 Existing buildings and works in the Farming Zone and Rural Activity Zone

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the use or maintenance of an existing building or works used for Agricultural production, including a dam, utility service, bore, horticultural trellising and accessway in the Farming Zone or the Rural Activity Zone.
- This exemption does not apply to:
 - the use or maintenance of a dwelling; or
 - the operation or maintenance of a fence; or
 - native vegetation located more than 10 metres from the outermost point of the building or works.

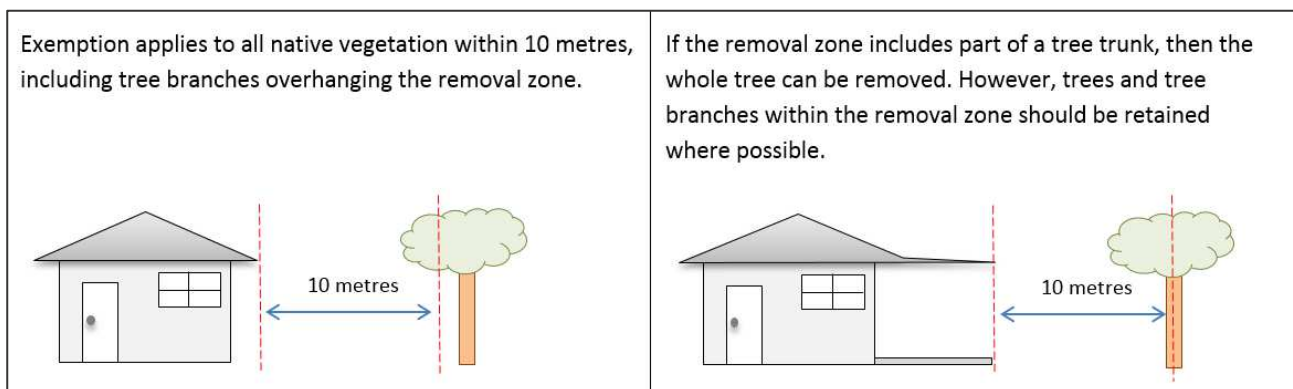
The purpose of this exemption is to not require a permit for the removal of native vegetation to enable the use or maintenance of an existing building or works used for Agricultural production.

'Works' in this exemption refers to things other than buildings used for agriculture production, such as the examples given within the exemption. Works does not include the action of removing native vegetation.

This exemption only applies in the Farming Zone or Rural Activity Zone.

The 10-metre limit applies from the top of canopy trees to the ground cover. If 10 metres from the outermost point of the building lands within the trunk of a tree, the entire tree may be removed under this exemption, if the removal is necessary to use or maintain the building. The lopping of branches should be considered prior to the removal of the entire tree.

Refer to the Fences exemption for native vegetation removal allowed for the operation or maintenance of a fence. Refer to the Existing buildings exemption for the exemption for native vegetation removal allowed for the use or maintenance of a dwelling.



2.7 Fences

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable:
 - the operation or maintenance of an existing fence
 - the construction of a boundary fence between properties in different ownership.
- The clearing along both sides of the fence when combined must not exceed 4 metres in width, except where land has already been cleared 4 metres or more along one side of the fence, then up to 1 metre can be cleared along the other side of the fence.

This exemption enables the removal of native vegetation in two separate activities.

1. The removal of native vegetation to maintain (or replace) an existing fence without the need to obtain a planning permit.

2. The removal of native vegetation to construct a new boundary fence between two properties in different ownership. Removing native vegetation for the construction of a new internal fence is not exempt from requiring a planning permit.

There are limits to the amount of native vegetation that can be removed to maintain or construct a fence. Native vegetation can be removed up to a combined maximum total width of 4 metres along the fenceline. This may consist of any combination of width distances on either side of the fence that totals 4 metres. For example, 2 metres on one side and 2 metres on the other, or 1 metre on one side and 3 metres on the other side.

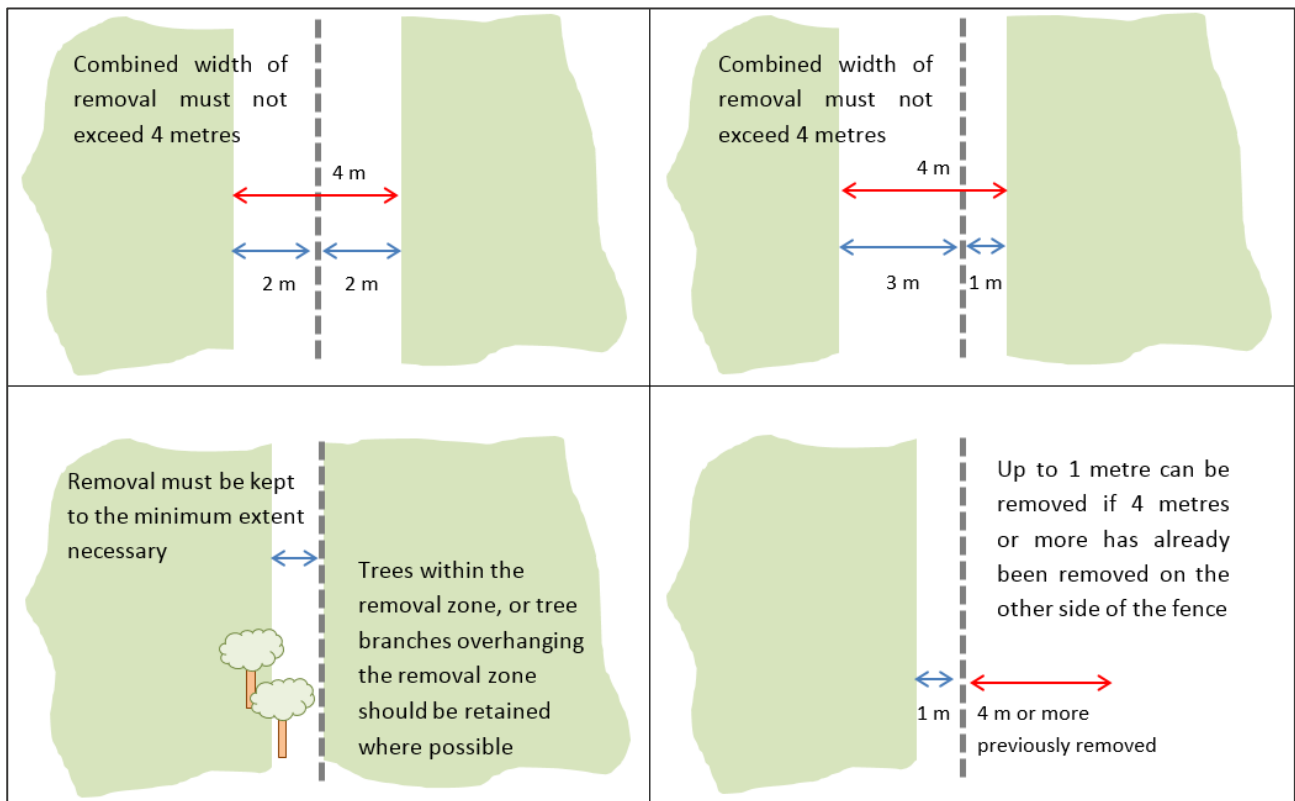
Note that if one side of the fence is already cleared to a width of 4 metres or more, regardless of when this clearing occurred (e.g. a cleared paddock), then up to 1 metre of native vegetation can be removed on the other side of the fence. This is to remove a limited amount of native vegetation that may hamper the construction or maintenance of the fence.

While there are area limits within this exemption the exemption does not automatically allow this amount of native vegetation to be removed. When relying on this exemption the removal of native vegetation must only be to the minimum extent necessary. To meet this requirement, consider the following:

- the exemption is intended to allow maintenance or construction of the fence, not to remove all the native vegetation that could fall on the fence at some point in time
- retain the following native vegetation if its removal is not necessary to enable maintenance or construction of a fence:
 - branches overhanging the clearance area
 - trees with trunks partially in the clearance area
 - ground cover.

Note that for new subdivisions, existing native vegetation that occurs within 4 metres along shared property boundaries must be accounted for in the planning permit application to allow for the future construction of all boundary fences. The area of consequential native vegetation removal is 4 metres times the length of the boundary fence.

Ensure adjacent landholder consent is obtained to clear on their side of the fence.



2.8 Fire protection

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to carry out any of the following fire protection activities:
 - fire fighting;
 - planned burning;
 - the making or maintenance of a fuelbreak or fire fighting access track (or any combination thereof) that does not exceed a combined width of 6 metres;
 - making a strategic fuelbreak up to 40 metres wide by or on behalf of a public authority in accordance with a strategic fuelbreak plan approved by the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*);
 - in accordance with a fire prevention notice issued under either:
 - Section 65 of the *Forests Act 1958*; or
 - Section 41 of the *Country Fire Authority Act 1958*;
 - keeping native vegetation clear of, or minimising the risk of bushfire ignition from, an electric line in accordance with a code of practice prepared under Part 8 of the *Electricity Safety Act 1998*;
 - minimising the risk to life and property from bushfire on a roadside of a public road managed by the relevant responsible road authority, and carried out by or on behalf of that authority, in accordance with written agreement of the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*). In this exemption, roadside, public road and responsible road authority have the same meanings as in section 3 of the *Road Management Act 2004*.

Note: Additional permit exemptions for bushfire protection are provided at Clause 52.48.

The purpose of this exemption is to not require a permit to remove native vegetation that is necessary for specific fire protection activities. In this exemption, roadside, public road and responsible road authority have the same meanings as in section 3 of the *Road Management Act 2004*.

This exemption comprises seven separate parts, each with a specific purpose.

1. Firefighting covers activities required to fight an active bushfire. It does not include activities that are in preparation for a bushfire or after a bushfire has occurred.
2. Planned burning refers to both ecological and fuel reduction burns, and includes the establishment of fire control lines. Planned burning is the deliberate application of fire under specified environmental conditions to a predetermined area and at a time, intensity and rate of spread required to achieve planned resource management objectives.
3. A fuelbreak is defined as a strip of land where vegetation has been removed or substantially modified to reduce the risk of bushfires starting and/or reduce the rate of spread and intensity of fire. A fire fighting access track is expressly for bushfire management purposes and not for other purposes.

Fuelbreaks and firefighting access tracks should be combined where possible, with the total width not exceeding 6 metres. Multiple fuelbreaks and/or fire fighting access tracks cannot be constructed abutting one another where the total width is greater than 6 metres. There must be a clear need for a fuel break and/or a fire fighting access track to protect life and property, in order to rely on this part of the exemption.

4. A strategic fuelbreak is a fuelbreak between 6 and 40 metres wide, created for the protection of strategic assets, such as water catchments. To rely on this exemption the fuelbreak must be established in accordance with a strategic fuel break plan approved by the Secretary to the DELWP. Note this exemption can only be relied on by a public authority, which does not include a municipal council.
5. This part of the exemption allows native vegetation removal to be undertaken in accordance with a fire prevention notice or direction issued under the relevant Act, without requiring a permit.
6. This part of the exemption allows native vegetation removal when undertaken to establish a clear zone, or minimise the risk of bushfire ignition from an electrical line, from requiring a permit. Native vegetation removal must be in accordance with the relevant Code of Practice.
7. This part of the exemption allows the removal of native vegetation on public roadsides managed by a responsible road authority to minimise the risk to life and property from bushfire. The road authority must obtain the written agreement of the Secretary to DELWP allowing them to undertake native vegetation removal in accordance with a work plan. The work plan is developed by a multi-agency group in accordance with the requirements of *Roadside vegetation management for bushfire risk mitigation purposes*.

Note that there are additional exemptions from requiring a permit to remove native vegetation for bushfire protection in Clause 52.48 of planning schemes.

2.9 Geothermal energy exploration and extraction

- Native vegetation removed, destroyed or lopped to the minimum extent necessary in accordance with an operation plan approved under the *Geothermal Energy Resources Act 2005*.

The purpose of this exemption is to avoid duplicative approval processes by not requiring a planning permit for native vegetation removal that occurs under an operation plan approved under the *Geothermal Energy Resources Act 2005*.

To rely on this exemption the removal of native vegetation must be part of an operation plan approved under the *Geothermal Energy Resources Act 2005*. This approval process requires assessment and offsetting of native vegetation removal in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation*.

2.10 Grasses

- Native grass that is to be mowed or slashed for maintenance only, provided that the grass is:
 - located within a lawn, garden or other landscaped area; or
 - maintained at a height of at least 10 centimetres above ground level.

The purpose of this exemption enables the mowing or slashing of native grasses to maintain existing assets, without the need to obtain a planning permit. This exemption does not apply to other plants such as herbs, bushes, shrubs and trees.

Note that:

- If the grass is a lawn, garden or landscaped area it can be mowed or slashed to any height.
- If the grass is not in a lawn, garden or landscaped area it cannot be mowed or slashed to less than 10 centimetres above ground level. This includes grasses in paddock, bushland or road reserve.

Slashing and mowing after seeding times should be considered to allow for natural regeneration of the treated area.

2.11 Grazing

- Native vegetation that is to be removed, destroyed or lopped by domestic stock grazing on:
 - freehold land; or
 - Crown land in accordance with a licence, permit or lease granted under applicable legislation.

The purpose of this exemption is to enable grazing by domestic stock on native vegetation without requiring a planning permit. This exemption only applies to grazing and does not apply to any other impacts that stock or agricultural activities may have on native vegetation.

Domestic stock are animals that are kept, bred or boarded for agricultural purposes.

2.12 Greenhouse gas sequestration (including exploration)

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary in accordance with an operation plan approved under the *Greenhouse Gas Geological Sequestration Act 2008*.

The purpose of this exemption is to avoid duplicative approval processes by not requiring a planning permit for native vegetation removal that occurs under an operation plan approved under the *Greenhouse Gas Geological Sequestration Act 2008*.

To rely on this exemption the removal of native vegetation must be provided for or required as part of an operation plan approved under the *Greenhouse Gas Geological Sequestration Act 2008*. This approval process involves the assessment and offsetting of native vegetation removal in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation*.

2.13 Harvesting for timber production – naturally established native vegetation

- Naturally established native vegetation that is to be removed, destroyed or lopped to enable timber harvesting operations and associated activities that are in accordance with the *Code of Practice for Timber Production 2014* and:
 - undertaken on public land under a licence or permit issued under section 52 of the *Forests Act 1958*; or
 - authorised in accordance with Part 5 of the *Sustainable Forests (Timber) Act 2004*.

The purpose of this exemption is to avoid duplicative approval processes for the removal of naturally established native vegetation when conducting timber harvesting operations on public land. To rely on this exemption to remove native vegetation without obtaining a planning permit, the timber harvesting activity must be in accordance with the *Code of Practice for Timber Production 2014*, which requires an approved timber harvesting plan, and:

- be on public land undertaken under the relevant licence or permit; or
- be authorised in accordance with Part 5 of the *Sustainable Forests (Timber) Act 2004*.

Native vegetation removal not included within the timber harvesting plan is not covered by this exemption.

Naturally established vegetation excludes plantations. Refer to the Regrowth exemption for native vegetation removal allowed within the boundary of a timber production plantation.

2.14 Land management and directions notices

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to comply with a land management notice or directions notice served under the *Catchment and Land Protection Act 1994*.

The purpose of this exemption is to not require a permit for the removal of native vegetation that is necessary in order to comply with land management or directions notices. To rely on this exemption to remove native vegetation the landowner must have been served a land management (s.37), or directions notice (s.70B) under the *Catchment and Land Protection Act 1994*.

A land management notice can put conditions or restrictions on land use or land management practices to improve land management or prevent or minimise land degradation.

A directions notice can direct a landowner for the control or eradication of noxious weeds or established pest animals.

2.15 Land use conditions

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to comply with a land use condition served under the *Catchment and Land Management Act 1994*.

The purpose of this exemption is to not require a permit for the removal of native vegetation necessary to comply with a land use condition served under the *Catchment and Land Management Act 1994*.

To rely on this exemption to remove native vegetation the landowner must have been served a land use condition (s.33) under the Act.

In accordance with a special area plan, a landowner may be served land use conditions, which sets out land use conditions applying to their land.

2.16 Lopping and pruning for maintenance

- Lopping or pruning native vegetation, for maintenance only, provided no more than 1/3 of the foliage of each individual plant is lopped or pruned.

This exemption does not apply to:

- the pruning or lopping of the trunk of a native tree; or
- native vegetation on a roadside or railway reservation.

The purpose of this exemption is to not require a permit for limited lopping or pruning of native vegetation for maintenance of an existing asset. This exemption only allows lopping and pruning of native vegetation that is interfering with a physical asset, not just to maintain native vegetation in a certain size or form.

The intent of the exemption is to not allow successive removal of one third of the foliage of an individual plant so that it reduces its foliage cover over time.

Foliage is the leaves of a plant.

The trunk of a tree is the large main stem from which the branches grow.

Lopping and pruning of native vegetation on roadsides and railway reserves is addressed within the relevant road safety and railways exemption.

2.17 Mineral exploration and extraction

- Native vegetation that to be removed, destroyed or lopped to the minimum extent necessary by the holder of an exploration, mining, prospecting, or retention licence issued under the *Mineral Resources (Sustainable Development) Act 1990*:
 - that is low impact exploration within the meaning of Schedule 4A of the *Mineral Resources (Sustainable Development) Act 1990*; or
 - in accordance with a work plan approved under Part 3 of the *Mineral Resources (Sustainable Development) Act 1990*.

Note: Schedule 4A of the Mineral Resources (Sustainable Development) Act 1990 specifies limits on the extent of native vegetation that may be removed as part of low impact exploration.

The purpose of this exemption is to avoid duplicative approval processes by not requiring a planning permit for native vegetation removal that occurs with approval under the *Mineral Resources (Sustainable Development) Act 1990*.

To rely on this exemption to remove native vegetation for mineral extraction the removal of native vegetation must be part of a work plan approved under the *Mineral Resources (Sustainable Development) Act 1990 (MRSD Act 1990)*. An agreement between Department of Economic Development, Jobs, Transport and Resources, the department responsible for administering the MRSD Act 1990, and DELWP requires that the approval process for a work plan involve assessment and offsetting of native vegetation removal in accordance with the *Guidelines for the removal, destruction and lopping of native vegetation*.

To rely on this exemption to remove native vegetation for mineral exploration the removal of native vegetation must be in accordance with low impact exploration as defined in Schedule 4A of the *Mineral Resources (Sustainable Development) Act 1990*.

2.18 New buildings and works in the Farming Zone and Rural Activity Zone

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the construction of a building or works used for Agricultural production, including a dam, utility service, bore and accessway, in the Farming Zone or the Rural Activity Zone.

The maximum extent of native vegetation that may be removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following:

- 1 hectare of native vegetation which does not include a tree;
- 15 native trees if each tree has a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level;
- 5 native trees if each tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level.

This exemption does not apply to the construction or operation of a pivot irrigation system or horticultural trellising.

The purpose of this exemption is to not require a permit for limited native vegetation removal to enable construction of a building or works used for agricultural production.

‘Works’ in this exemption refers to things other than buildings used for agricultural production, such as the examples given (dam, utility services etc.). Works does not include the action of removing native vegetation.

The native vegetation removed must not exceed any of the specified limits, but it can include a combination of these. Those relying on this exemption to remove native vegetation should keep records of the date, amount and type of native vegetation that is being removed to ensure that it is within the exemption limits. If the limit is exceeded during the period, then a permit is required for the part of the native vegetation that is over the limit.

2.19 New dwellings in the Farming Zone and Rural Activity Zone

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the construction of a dwelling in the Farming Zone or the Rural Activity Zone.

The maximum extent of native vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following:

- 300 square metres of native vegetation which does not include a tree;
- 5 native trees if each tree has a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level;
- 1 native tree if the tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level.

This exemption does not apply to native vegetation removed, destroyed or lopped to enable the construction of a swimming pool, tennis court, or horse ménage.

The purpose of this exemption is to not require a permit for a limited amount of native vegetation removal to enable construction of a new dwelling in the Farming Zone or the Rural Activity Zone.

The native vegetation removed must not exceed any of the dot point limits, but it can include a combination of these. Those relying on this exemption to remove native vegetation should keep records of the date, amount and type of native vegetation that is being removed to ensure that it is within the exemption limits. If the limit is exceeded during the period, then a permit is required for the part of the native vegetation that is over the limit.

2.20 Personal use

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to obtain reasonable amounts of wood for personal use by the owner or lawful occupier of the land.

For the purpose of this exemption, personal use means uses such as heating and cooking, building and fence construction on the land, and hobbies such as arts and craft.

This exemption does not apply to:

- contiguous land in one ownership that has an area of less than 10 hectares; or

- the removal, destruction or lopping of native vegetation by means other than cutting or chopping; or
- a standing native tree (including a dead tree) with a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level.

The purpose of this exemption is to not require a permit to obtain wood through the removal of a limited number of small trees and logs for personal use. This exemption only relates to wood, which could come from woody bushes or small trees (dead or alive) and does not include large trees or other types of native vegetation, such as flowers and grasses.

Only the owner or lawful occupier of contiguous land in the one ownership that is larger than 10 hectares can rely on this exemption to remove native vegetation. The owner or occupier of the land cannot give permission to another party to rely on this exemption to remove native vegetation for that party's personal use.

Reasonable amount refers to the amount of native vegetation necessary to carry out a particular personal use. For example, if a landowner is constructing a new fence that requires 20 fence posts, it is reasonable for them to only remove enough native vegetation to create 20 posts. Reasonable can be tested as to what would be an amount of native vegetation other reasonable people in similar circumstances could be expected to use.

The removal of native vegetation for trade or sale is not allowed when relying on this exemption, as that would not be for personal use.

This exemption only applies to native vegetation removed by cutting or chopping, which includes chain sawing, but does not include removal by bulldozers or tractors.

2.21 Pest animal burrows

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the removal of pest animal burrows in the Farming Zone or the Rural Activity Zone:
 - in accordance with written agreement of an officer of the department responsible for administering the *Flora and Fauna Guarantee Act 1988*; or
 - provided the maximum extent of native vegetation removed, destroyed or lopped on contiguous land in the same ownership in a five year period does not exceed any of the following:
 - 1 hectare of native vegetation which does not include a tree;
 - 15 native trees if each tree has a trunk diameter of less than 20 centimetres at a height of 1.3 metres above ground level.

The purpose of this exemption is to not require a permit for the removal of a limited amount of native vegetation to enable the removal of pest animal burrows. The native vegetation removal allowed is incidental to the removal of the pest animal burrows. Pest animal is as defined in the *Catchment and Land Protection Act 1994*.

This exemption comprises two separate parts, each with a specific purpose.

1. The first part relates to the removal of pest animal burrows which cover a large area and may require the removal of native vegetation beyond the limits of the second dot point. In such circumstances, conditions can be placed on the written agreement of an officer of DELWP which address the potential impact to native vegetation.
2. In the second part the removal does not require written agreement but must be within the limits included in the exemption. The native vegetation removed must not exceed any of the dot point limits, but it can include a combination of these. If the limit is exceeded during the period, then a permit is required for the part of the native vegetation that is over the limit. The landholder must keep accurate records to demonstrate compliance with the native vegetation removal limits and time requirements of this exemption.

Note that this exemption can only be relied on to remove native vegetation in either the Farming Zone or Rural Activity Zone.

Note that in Clause 52.16 this exemption only consists of the first part.

2.22 Planted vegetation

- Native vegetation that is to be removed, destroyed or lopped that was either planted, or grown as a result of direct seeding.

This exemption does not apply to native vegetation planted or managed with public funding for the purpose of land protection or enhancing biodiversity unless the removal, destruction or lopping of the native vegetation is in accordance with written permission of the agency (or its successor) that provided the funding.

The purpose of this exemption is to not require a permit for the removal of native vegetation which has either been planted (e.g. planting a seedling or an established plant) or grown from direct seeding (e.g. placing a seed in the ground in any manner).

This exemption does not apply to native vegetation planted or grown with public funding for the primary purposes of enhancing biodiversity or protection of land, unless the funding agency (or its successor) provides written agreement to the landholder to remove the native vegetation.

Biodiversity purposes include improving rare and threatened species habitat, improving the condition or extent of native vegetation or improving the functioning of an ecosystem and its delivery of ecosystem services. It does not include planting that may have biodiversity benefits, but that the main purpose of the planting was amenity, such as along a road.

Land protection purposes include managing salinity and erosion, or improving the quality of land or water resources. It does not include planting that may have an erosion management function, but that the main purpose of the planting was amenity, such as along a road.

Written agreement allows the funding agency to place conditions on the native vegetation removal which does not undermine the original purpose of the funding.

Public funding includes money provided by any level of government or public authority. It may then be passed on to another organisation or authority to administer, or to provide in grants to third parties.

2.23 Railways

Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to maintain the safe and efficient function of an existing railway, or railway access road, in accordance with written agreement of the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*).

The purpose of this exemption is to not require a permit for the removal of native vegetation along existing railways and railway access roads for routine maintenance, and some essential construction works.

To rely on this exemption to remove native vegetation the rail manager must have written agreement from the Secretary to DELWP. The Secretary's written agreement may require compliance with the *Railways exemption – procedure for the removal, destruction or lopping of native vegetation* (the Railways procedure). The Railways procedure includes a set of obligations which align with the no net loss objective.

The Railways procedure and list of rail managers that have written agreement to rely on this exemption to remove native vegetation can be found on the DELWP website at www.environment.vic.gov.au/native-vegetation

2.24 Regrowth

- Native vegetation that is to be removed, destroyed or lopped that has naturally established or regenerated on land lawfully cleared of naturally established native vegetation, and is:
 - less than 10 years old; or
 - bracken (*Pteridium esculentum*); or
 - less than ten years old at the time of a property vegetation plan being signed by the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*); and is
 - > shown on that Plan as being 'certified regrowth'; and
 - > on land that is to be used or maintained for cultivation or pasture during the term of that Plan; or
 - within the boundary of a timber production plantation, as indicated on a Plantation Development Notice or other documented record, and has established after the plantation.

This exemption does not apply to land where native vegetation has been destroyed or otherwise damaged as a result of flood, fire or other natural disaster.

The primary purpose of this exemption is to not require a permit for the removal of native vegetation that has regrown in an area that has been lawfully cleared.

Land lawfully cleared includes:

- land cleared with a planning permit
- land cleared relying on exemptions from requiring a planning permit
- clearing that was legal at the time it originally occurred, and the area has been periodically maintained as cleared land since then, including within the last 10 years.

This exemption comprises four separate parts, each with a specific purpose.

1. The first part allows for the continuous clearing of an area that has been lawfully cleared within the past 10 years. It does not apply to areas where 10 years or more have elapsed between episodes of clearing, or to native plants in locations that have not been lawfully cleared within the previous 10 years.
2. The second part allows bracken to be cleared, regardless of its age, from areas lawfully cleared in the past.
3. The third part relates to a property vegetation plan (PVP) approved under Section 69 of the *Conservation, Forests and Lands Act 1987*. Only native vegetation identified on the PVP as regrowth, or identified on land used or maintained for cultivation or pasture for the duration of the PVP is considered as regrowth and exempt.
4. The fourth part of the exemption relates to a documented timber production plantation. If the plantation has ceased to be used for the purpose of timber production, the exemption still applies as long as the area continues to be documented as a plantation. Note that the planted vegetation exemption relates to the original timber harvested in the planation.

Regrowth that occurs in areas where native vegetation was destroyed or damaged as a result of flood, fire or other natural disaster is not exempt, as its removal has not been assessed and approved.

In Clause 52.16 the exemption does not include part 1 (less than 10 years old) as areas where regrowth can be cleared in the future are specifically identified in the NVPP. Clause 52.16 does not include the property vegetation plan part as these would not occur for retained vegetation within a NVPP.

2.25 Road safety

Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary by or on behalf of a public authority or municipal council to maintain the safe and efficient function of an existing road in accordance with the written agreement of the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*).

The purpose of this exemption is to not require a permit for the removal of native vegetation along existing roads for routine maintenance, and some essential safety and construction works.

To rely on this exemption to remove native vegetation a public authority or municipal council must have written agreement from the Secretary to DELWP. The Secretary's written agreement may require compliance with the *Road safety exemption – procedure for the removal, destruction or lopping of native vegetation* (Road safety procedure). The Road safety procedure includes a set of obligations which align with the no net loss objective.

The Road safety procedure and a list of road authorities that have written agreement to rely on this exemption to remove native vegetation can be found on the DELWP website at www.environment.vic.gov.au/native-vegetation.

2.26 Site area

- Native vegetation that is to be removed, destroyed or lopped on land, which together with all contiguous land in one ownership, has an area of less than 0.4 hectares.
This exemption does not apply to native vegetation on a roadside or rail reservation.

The purpose of this exemption is to not require a permit for the removal of native vegetation on small lots.

This is because when land is subdivided into small lots it becomes disconnected from other native vegetation and becomes degraded. Any native vegetation remaining on small lots has reduced environmental value and therefore is assumed lost.

When land is being subdivided into lots 0.4 hectares or smaller this enable the consequential removal of native vegetation without a planning permit in future. All the native vegetation on these lots should be assessed and offset in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* at the time of subdivision.

2.27 Stone exploration

- Native vegetation that it to be removed, destroyed or lopped to the minimum extent necessary to enable the carrying out of stone exploration.

The maximum extent of native vegetation that may be removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following:

- 1 hectare of native vegetation which does not include a tree;
- 15 native trees with a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level;
- 5 native trees with a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level.

This exemption does not apply to costeaning and bulk sampling activities.

The purpose of this exemption is to allow limited native vegetation removal when carrying out stone exploration.

Stone is defined in planning schemes as: Basalt, freestone, granite, limestone, sandstone, or other building stone, or rock, ordinarily used for building, manufacturing, road making, or construction; or clay (not fine clay, bentonite, or kaolin), earth, gravel, quartz (not quartz crystals), sand, soil, slate, or other similar material.

The native vegetation removed must not exceed any of the dot point limits, but it can include a combination of these. Those relying on this exemption to remove native vegetation should keep records of the date, amount and type of native vegetation that is being removed to ensure that it is within the exemption limits. If the limit is exceeded during the period, then a permit is required for the part of the native vegetation that is over the limit.

2.28 Stone extraction

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the carrying out of stone extraction in accordance with a work plan approved under the *Mineral Resources (Sustainable Development) Act 1990* and authorised by a work authority under that Act.

The purpose of this exemption is to avoid duplicative approval processes by not requiring a planning permit for native vegetation removal that occurs in association with work under a work plan for stone extraction approved under the *MRSD Act 1990*.

To rely on this exemption to remove native vegetation for stone extraction the removal of native vegetation must be associated with work under a work plan approved under the *MRSD Act 1990* and authorised by a work authority under that Act. This approval process involves assessment and offsetting of native vegetation removal in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation*.

2.29 Stock movements on roads

- Native vegetation that is to be removed or destroyed by stock being moved along a road.
This exemption does not apply to grazing as a result of holding stock in a temporary fence (including an electric fence) on a roadside for the purpose of feeding.

The purpose of this exemption is to not require a permit for the incidental destruction of native vegetation made by stock when they are moved along a road.

Stock includes domestic animals kept for the purpose of agriculture.

Note that this exemption does not apply to grazing as a result of holding stock in a temporary fence (including an electric fence) on a roadside for the purpose of feeding.

2.30 Surveying

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary by or on behalf of a licensed surveyor (within the meaning of section 3 of the *Surveying Act 2004*) using hand-held tools to establish a sightline for the measurement of land.

The purpose of this exemption is to not require a permit for the removal of native vegetation to establish sight lines when surveying.

A licensed surveyor is defined under the *Surveying Act 2004* as a person whose name is entered on the Register of Licensed Surveyors (also defined in this Act). Those acting on behalf of a licensed surveyor, such as assistants or contractors, can rely on this exemption to remove native vegetation.

The native vegetation can only be removed using tools that can be held and operated in a person's hand(s), such as an axe or a chainsaw.

2.31 Traditional Owners

- Native vegetation that is to be removed, destroyed or lopped by a person acting under, and in accordance with:
 - a natural resource agreement under Part 6 of the *Traditional Owner Settlement Act 2010*; or
 - an authorisation order made under sections 82 or 84 the *Traditional Owner Settlement Act 2010* as those sections were in force immediately before the commencement of section 24 of the *Traditional Owner Settlement Amendment Act in 2016* (1 May 2017).

The purpose of this exemption is to not require a permit for the removal of native vegetation by Traditional Owners when they are acting under, and in accordance with a natural resource agreement under part 6 of the *Traditional Owner Settlement Act 2010*. This is the current agreement.

In addition, the purpose of this exemption is to not require a permit for the removal of native vegetation by Traditional Owners when they are acting under, and in accordance with a natural resource agreement that was established under the *Traditional Owner Settlement Act 2010* before May 2017 when the Act was amended. Before May 2017 the natural resource agreements were pursuant to the then section 80 of the *Traditional Owner Settlement Act 2010*.

The natural resource agreement applies to a specific area, either on Crown land or land in the Traditional Owners' ownership, and specifies how natural resources, including native vegetation, can be used for traditional and cultural purposes.

2.32 Utility installations

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary:
 - to maintain the safe and efficient function of a Minor utility installation; or
 - by or on behalf of a utility service provider to maintain or construct a Utility installation in accordance with written agreement of the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*).

This exemption comprises two separate parts, each with a specific purpose.

1. The purpose of the first part of the exemption is to enable the removal of native vegetation to undertake maintenance of a Minor utility installation. The maintenance activities are routine, ongoing and needed to keep an existing installation as close as possible to its current functioning state. Anyone can undertake these maintenance activities, without the need to obtain a planning permit.

A minor utility installation is defined in Clause 74 of all planning schemes as:

Land used for a utility installation comprising any of the following:

- a. sewerage or water mains;
 - b. storm or flood water drains or retarding basins;
 - c. gas mains providing gas directly to consumers;
 - d. power lines designed to operate at less than 220,000 volts;
 - e. a sewage treatment plant, and any associated disposal works, required to serve a neighbourhood;
 - f. a pumping station required to serve a neighbourhood; or
 - g. an electrical sub-station designed to operate at no more than 66,000 volts. It includes any associated flow measurement device or a structure to gauge waterway flow.
2. The purpose of the second part of the exemption is to enable the removal of native vegetation for routine maintenance, and construction works for a utility installation, without the need to obtain a planning permit. This is subject to the removal of native vegetation being undertaken in accordance with the

written agreement of the Secretary to the DELWP (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*).

The written agreement may require compliance with a *Utility installations exemption – procedure for the removal, destruction or lopping of native vegetation*. This document includes a set of obligations that align with the no net loss objective. Any procedure and a list of the utility service providers that have written agreement to rely on this exemption to remove native vegetation can be found on the DELWP website at <https://www.environment.vic.gov.au/native-vegetation>.

This part of the exemption is available to a utility services provider, or those acting on their behalf. A utility service provider is defined in Clause 72 of all planning schemes as:

A person, other than a public authority or municipal council, having responsibility under an Act for the generation, transmission, distribution or supply of electricity, gas, power, telecommunications, water supply, drainage or sewerage services.

Utility installation is defined in Clause 72 of all planning schemes as:

Land used:

- a. for telecommunications;
- b. to transmit or distribute gas, oil, or power;
- c. to collect, treat, transmit, store, or distribute water; or
- d. to collect, treat, or dispose of storm or flood water, sewage, or sullage.

It includes any associated flow measurement device or a structure to gauge waterway flow.

2.33 Vehicle access from public roads

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the construction or maintenance of a vehicle access across a road reserve from a property boundary to a public road.

This exemption only applies to properties which share a common boundary with the road reserve, and the total width of clearing must not exceed 6 metres.

This exemption does not apply where there is a practical opportunity to site the accessway to avoid the removal, destruction or lopping of native vegetation.

In this exemption, roadside and public road have the same meanings as in section 3 of the *Road Management Act 2004*.

Note: Under the Road Management Act 2004 the written consent of the coordinating road authority is required to conduct any works, including removing a tree or other vegetation, in, on, under or over a road.

This purpose of this exemption is to not require a permit to remove native vegetation in a public roadside to construct or maintain a vehicle accessway to a property.

The construction of a new accessway is only exempt if there is no existing accessway which provides reasonable access to an area of the property. A benchmark of one accessway per land parcel is considered reasonable.

All practical opportunities must be explored to place the accessway to avoid the removal of native vegetation. Areas of the public roadside where there is little or no native vegetation should first be considered for the accessway. If areas without native vegetation do not exist, or if using these areas for the accessway is not considered practical in terms of safety, or proximity to the areas of the property that need to be accessed, then the removal of native vegetation under this exemption can be considered. The removal of any native vegetation is required to be minimised.

The total width of native vegetation removal must not exceed 6 metres. There are no limits to the length of accessway required, but it must be a direct path from the public road to the property boundary.

Note that for new subdivisions the removal of native vegetation for the provision of access to all lots, including new roads and accessways, should be included in consequential loss of native vegetation that relates to the subdivision.

2.34 Weeds

- Native vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the removal or destruction of a weed listed in the schedule to Clause 52.17.
- The maximum extent of native vegetation that may be removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following:
 - 1 hectare of native vegetation which does not include a tree;
 - 15 native trees with a trunk diameter of less than 20 centimetres at a height of 1.3 metres above ground level.

The purpose of this exemption is to not require a permit to remove minimal native vegetation that is incidental in the removal of weeds listed in the schedule of Clause 52.17 of the relevant planning scheme.

The native vegetation removed that is incidental to removing the weed must not exceed any of the dot point limits, but it can include a combination of these. Those relying on this exemption to remove native vegetation should keep records of the date, amount and type of native vegetation that is being removed to ensure that it is within the exemption limits. If the limit is exceeded during the period, then a permit is required for the part of the native vegetation that is over the limit.

The listed weed can be noxious or indigenous. There are no limits to the amount that can be removed of the weed that is listed in the schedule. Care should be taken when listing indigenous weeds in Schedule 2, as listing a plant species in the schedule exempts its removal in the whole municipality. A weed and an associated area can be listed in Schedule 1 to limit where this plant can be removed. Planning authorities should consult with DELWP before adding or updating to the weeds and areas listed in the schedules to Clause 52.17.

