

Procedure to rely on the utility installations exemption in planning schemes

Water service providers



December 2020



Environment,
Land, Water
and Planning

OFFICIAL

Acknowledgment

We acknowledge and respect Victorian Traditional Owners as the original custodians of Victoria's land and waters, their unique ability to care for Country and deep spiritual connection to it. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

We are committed to genuinely partner, and meaningfully engage, with Victoria's Traditional Owners and Aboriginal communities to support the protection of Country, the maintenance of spiritual and cultural practices and their broader aspirations in the 21st century and beyond.



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APPROVAL

This *Procedure to rely on the utility installations exemption in planning schemes – Water service providers* is approved by the Secretary to the Department of Environment, Land, Water and Planning (DELWP). It enables water service providers that have written agreement from the Secretary to DELWP to rely on the *Utility installations* exemption without needing a planning permit to remove, destroy or lop native vegetation, provided native vegetation removal complies with this Procedure.

Approved on the 20th day of January 2021



John Bradley

Secretary to the Department of Environment, Land, Water and Planning

ACCESS TO THE UTILITY INSTALLATIONS EXEMPTION IN LOCAL PLANNING SCHEMES

Any water service provider seeking access to the *Utility installations* exemption in local planning schemes must obtain written agreement from the Secretary to DELWP. Written agreement will require that the water service provider complies with the *Procedure to rely on the utility installations exemption in planning schemes – Water service providers*. Requests for written agreement must be sent to nativevegetation.support@delwp.vic.gov.au.

Contents

1. Introduction	3
1.1 Native vegetation removal regulations	3
1.2 Purpose and scope	4
1.3 Evaluate and report	4
1.4 Compliance	4
2. Procedure requirements	5
2.1 Maintenance	5
2.1.1 Avoid and minimise requirement	5
2.1.2 Native vegetation retention requirement	5
2.1.3 Native vegetation offsets	5
2.1.4 Record keeping requirement	5
2.2 Construction	6
2.2.1 Avoid and minimise requirement	6
2.2.2 Native vegetation removal requirement	6
2.2.3 Consultation requirement	6
2.2.4 Final project design requirement	7
2.2.5 Project endorsement requirement	7
2.2.6 Native vegetation retention requirement	8
2.2.7 Native vegetation offset requirement	8
Appendix 1 – Quick reference	9
Appendix 2 – Exempt project endorsement form	10
Glossary	11

1. Introduction

Victoria's existing water utility installations enable the delivery and storage of water across Victoria. Victoria's residents, businesses and visitors rely on these installations for the reliable distribution of water. It is essential that these utility installations operate in a safe and efficient manner. Under the *Water Act 1989* and *Water Industry Act 1994*, water service providers have a legal responsibility to ensure these installations are operating safely and efficiently.

Utility installations include Minor utility installations as defined in all local planning schemes in Victoria and include the pieces of infrastructure managed for the collection, storage, distribution, treatment and flow measurement of water and wastewater.

Native vegetation must sometimes be removed to maintain, augment or construct utility installations within this storage and distribution network.

1.1 Native vegetation removal regulations

In Victoria, native vegetation removal is regulated under the *Planning and Environment Act 1987* through local planning schemes. Under Clauses 52.16 and 52.17 of local planning schemes a permit is required to 'remove, destroy, or lop' (remove) native vegetation unless an exemption applies.

Clauses 52.16 and 52.17 contain exemptions to the requirement to obtain a planning permit. The *Utility installations* exemption applies to utility service providers, which include water service providers.

The *Utility installations* exemption states:

The requirement to obtain a permit does not apply to 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 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).*

Utility installation is defined in Clause 73.03 of local planning schemes, and includes land used to collect, treat, transmit, store, distribute or dispose water, storm or flood water, sewage, or sullage.

A Minor utility installation is a subset of Utility installation and defined in Clause 73.03 of local planning schemes and contains a list of relevant land uses.

Removal of native vegetation under any other relevant exemption

This *Procedure to rely on the utility installations exemption in planning schemes – Water service providers* does not apply to native vegetation removal that is exempt from a planning permit due to another relevant exemption in local planning schemes.

The use of another exemption must be in accordance with its description and the principles of avoid and minimise must be applied for all native vegetation removal.

Water service providers must ensure native vegetation removal complies with other legislation, including but not limited to:

- *Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth) (EPBC Act)*
- *Flora and Fauna Guarantee Act 1988 (FFG Act)*
- *Catchment and Land Protection Act 1994*
- *Environment Effects Act 1978*
- *Wildlife Act 1975*
- *Aboriginal Heritage Act 2006*
- *Heritage Act 1995*
- *Planning and Environment Act 1987* (Permits may still be required within planning overlays)

Property title checks should also occur to ensure that any on title restrictions are identified, such as native vegetation offset sites or conservation areas.

Water service providers using the *Utility installations* exemption should be familiar with the following publications available on the DELWP website, that support the implementation of the native vegetation removal regulations:

- *Guidelines for the removal, destruction or lopping of native vegetation* (Guidelines)
- *Applicant's guide – applications to remove, destroy or lop native vegetation* (Applicant's guide)
- *Assessor's handbook – applications to remove, destroy or lop native vegetation* (Assessor's handbook).

1.2 Purpose and scope

Purpose

This Procedure enables water service providers to seek and gain written agreement from the Secretary to DELWP to rely on the second component of the *Utility installations* exemption. Any written agreement will require that native vegetation removal is done in accordance with this Procedure.

This exemption allows water service providers to confidently plan and deliver essential maintenance and low impact construction activities within delivery timeframes, while still applying the native vegetation removal regulations.

This Procedure only applies to the *Utility installations* exemption and operates independently of the other exemptions.

Scope

This Procedure only applies to water service providers that have written agreement from the Secretary to rely on the *Utility installations* exemption. It can only be used for Utility installations under their direct management.

Native vegetation removal to the minimum extent necessary to **maintain** the safe and efficient function of a Minor utility installation is not required to comply with this Procedure. However, it may be used to assist in defining maintenance activities.

This Procedure **only applies** (refer to Table 1) to native vegetation removal for:

- Maintenance as defined in Section 2.1
- Construction (includes removal of Large trees) as defined in Section 2.2

Table 1- Scope of Procedure

	Minor utility	Utility
Maintenance	Not required to comply with Procedure	Comply with Procedure
Construction (<0.5 ha of native vegetation removal)	Comply with Procedure	Comply with procedure
Construction (0.5 ha or greater of native vegetation removal)	Obtain planning approval	Obtain planning approval

Extent of native vegetation removal includes the area of patches, plus any large (0.071ha) and small (0.030ha) scattered trees.

Large trees within patches must be identified.

1.3 Evaluate and report

DELWP's Native vegetation regulation will:

- publish this Procedure with a list of water service providers that have written agreement
- prepare annual reports for endorsed construction works.
- review this Procedure one year after its approval, and periodically thereafter. It and any written agreement will be amended as required.

1.4 Compliance

The water service provider is responsible for complying with this Procedure once written agreement has been provided.

DELWP regional staff are responsible for ensuring all requirements are met and for endorsing construction proposals.

If a dispute arises concerning the implementation of this Procedure, the parties will attempt to resolve the matter at an operational level. Disputes that cannot be resolved at an operational level must be elevated to senior management, supported as required by the relevant policy teams from each organisation.

Removal of native vegetation not identified in the *Native vegetation removal report* endorsed by DELWP is a breach of the Procedure and will be considered unauthorised removal. It may be subject to compliance and enforcement action under the *Planning and Environment Act 1987*.

Breaches by the water service provider, including a failure to offset, may lead to the withdrawal, or variation of the written agreement to rely on the *Utility installations* exemption.

Landowner consent

Any proposed native vegetation removal from land not owned or managed by the water service provider requires consent from the relevant landowner or land manager.

2. Procedure requirements

This Procedure describes two native vegetation removal categories:

- Maintenance of Utility installations
- Construction of Utility installations

Water service providers must determine if the proposed native vegetation is for a maintenance or construction activity.

Appendix 1 provides a quick guide to help ensure correct application of this Procedure.

There is an exemption for native vegetation removal to the minimum extent necessary to maintain Minor utility installations so this procedure does not apply to these situations but can be used as a guide to enable a consistent approach.

2.1 Maintenance

Water service providers must comply with these requirements when removing native vegetation to maintain a Utility installation, that is not considered minor.

Maintenance includes native vegetation removal for:

- planned and routine maintenance to existing Utility installations, or
- unplanned maintenance to existing Utility installations to address an immediate failure or unexpected damage to utilities.

Native vegetation removed for maintenance must be to the minimum extent necessary. Native vegetation removal must be restricted to only what is necessary to meet the maintenance objective. Maintenance includes removing native vegetation:

- that has re-established or is encroaching on existing (currently in use) Utility installations or access/service tracks
- from areas that were previously offset during the construction/installation of the utility
- lopping or pruning native vegetation (including within road and rail reserves), provided no more than a third of the foliage of each individual plant is lopped or pruned and the lopping or pruning is not the trunk of a native tree.

Maintenance **does not** include:

- the expansion of existing or construction of new Utility installations, access or service roads,
- removal of large trees (defined in Glossary),
- removal of native vegetation from Utility installations no longer in use or decommissioned,
- the removal of native vegetation purposely retained during the construction of the installation.

2.1.1 Avoid and minimise requirement

Native vegetation removal must be to the minimum extent necessary. Water service providers must avoid native vegetation removal where practical. Opportunities to avoid and minimise impacts on native vegetation are best considered when planning and developing maintenance regimes or works.

Internal review should occur to identify opportunities for minimisation, especially when maintenance programs involve the removal of native vegetation along long lengths of Utility installations, or through known areas of biodiversity significance.

DELWP regional staff and Council officers may be able to assist as needed.

2.1.2 Native vegetation retention requirement

Native vegetation (including tree protection zones) adjacent to the maintenance area that is at risk of unintentional impact must be protected during the maintenance activity. The water service provider's standard operational processes must implement measures to avoid adverse impacts to native vegetation and prevent land and water degradation.

2.1.3 Native vegetation offsets

Offsets are not required for native vegetation removal to maintain Utility installations.

2.1.4 Record keeping requirement

Areas where maintenance activities occur must be internally documented/logged when native vegetation removal occurs.

Neither reporting the amount of native vegetation removal, nor consulting with DELWP are required for maintenance activities.

2.2 Construction

Water service providers must comply with these requirements and have the *Exempt project endorsement form* (Appendix 2) endorsed before removing native vegetation for construction of a Utility installation.

Construction includes native vegetation removal for:

- New builds
- Augmentation, improvement or upgrade works resulting in an expanded footprint of Utility installations
- Removal of Large trees

2.2.1 Avoid and minimise requirement

Native vegetation removal must be avoided whenever possible. Impacts to native vegetation that cannot be avoided must be to the minimum extent necessary. This ensures the impacts on existing biodiversity values are kept to a minimum.

Opportunities to avoid and minimise impacts should focus on biodiversity values identified in the *Native vegetation removal report* and specifically on areas with higher values. Table 2 describes the biodiversity values relevant to each assessment pathway.

Table 2 – Biodiversity values to consider when avoiding and minimising impacts

Assessment pathway	Biodiversity values
Basic	<ul style="list-style-type: none">• Native vegetation extent• Native vegetation condition• Strategic biodiversity value
Intermediate	As for basic, and; <ul style="list-style-type: none">• Large trees• Sensitive wetlands and coastal areas• Endangered ecological vegetation classes
Detailed	As for basic and intermediate, and; <ul style="list-style-type: none">• Habitat for Victoria's rare or threatened species

An avoid and minimise statement that describes how impacts on biodiversity values were avoided and minimised (or couldn't be avoided) must be included in the *Exempt project endorsement form* (refer to Appendix 2).

2.2.2 Native vegetation removal requirement

Native vegetation removal must be identified in accordance with the Guidelines. This includes consideration of past removal from previous project stages, direct removal and assumed losses of native vegetation as detailed in the Guidelines, and listed below:

- vehicle access and impacts of construction activities
- need for ongoing access or safety risks
- changes to hydrology
- compaction and excavation
- impacts to tree protection zones in accordance with the *Australian standard 4970-2009 Protection of trees on development sites* (AS 4970-2009). If more than 10% of a TPZ is impacted, an arborist is required to determine whether the impact will not have a significant impact on the tree's survival.

NVIM Native vegetation removal tool

The NVIM Native vegetation removal tool is available at <https://nvim.delwp.vic.gov.au/>. Applicants map proposed native vegetation removal in this tool, which will generate a *Native vegetation removal report* and a shapefile of the area identified.

If the *Native vegetation removal report* states that no offsets are required, the avoid and minimise requirement must still be complied with. Consultation must still be held to ensure all impacts were considered.

Proposals in the Detailed Assessment Pathway require a site assessment by an accredited native vegetation assessor. The report generated from NVIM native vegetation removal tool cannot be used for these applications.

2.2.3 Consultation requirement

The assessment pathway identified in the *Native vegetation removal report* will determine who the water service provider must consult with about impacts on native vegetation. Early consultation in the planning stage will help minimise impacts on biodiversity values and to inform final designs.

Table 3 details who to consult with based on the assessment pathway of the proposal.

Table 3 – Consultation required based on assessment pathway

Assessment pathway	Consult with
Basic	Utility service provider's staff, or consultant
Intermediate	Utility service provider's staff, or consultant
Detailed	DELWP (regional contacts will be provided when written agreement is supplied)

Consultation with DELWP regional staff may help to:

- verify the extent of native vegetation removal
- identify opportunities to avoid and minimise impacts on biodiversity values
- develop mitigation measures for construction (if deemed necessary)
- identify other legislative requirements.

When consulting with DELWP regions, the following will help determine if an on-site meeting, or additional assessment time is needed:

- a preliminary *Native vegetation removal report*
- details of the size and complexity of the works
- details of possible project design flexibility.

Effective, early consultation will ensure timely endorsement once the project is formally submitted to the DELWP region. Early consultation also identifies any offset availability issues and provides time for solutions to be investigated.

2.2.4 Final project design requirement

Once there are no more practical opportunities to avoid or minimise impact to native vegetation, the final extent of native vegetation to be removed must be mapped to determine the assessment pathway and next steps.

Basic or Intermediate Assessment Pathway

The NVIM Native vegetation removal tool will produce a *Native vegetation removal report* that includes biodiversity impact information and offset requirements. If preferred, a site assessment can be done to replace the modelled condition score and mapped ecological vegetation class (EVC). Attach the *Native vegetation removal report* to the *Exempt project endorsement form* (refer to Appendix 2).

Detailed Assessment Pathway

A site assessment, in accordance with the Guidelines is required when the proposed removal is in the Detailed Assessment Pathway. An accredited native vegetation assessor must be appointed to complete the site assessment and submit a shapefile of the proposed native vegetation removal to DELWP at

EnSymNVRtool.support@delwp.vic.gov.au.

DELWP Native vegetation regulation team will provide a *Native vegetation removal report* that includes biodiversity impact information and offset requirements. Attach this report to the *Exempt project endorsement form* (refer to Appendix 2).

2.2.5 Project endorsement requirement

Before native vegetation is removed, the water service provider must obtain endorsement from the DELWP region that the native vegetation removal can proceed under the *Utility installations* exemption and that it meets the requirements of this Procedure.

An *Exempt project endorsement form* (refer to Appendix 2) must be completed by the water service provider and submitted to the relevant DELWP region. All information is mandatory:

- contact details
- topographical and land information
- avoid and minimise statement
- recent photographs of native vegetation proposed for removal
- *Native vegetation removal report*
- site assessment (Detailed Assessment Pathway only)
- offset statement that demonstrates a compliant offset can be secured.
- Map (aerial imagery) of project footprint including clearly defined areas of native vegetation removal

Once a complete *Exempt project endorsement form* (refer to Appendix 2) has been received, the DELWP region will provide a written response within 15 working days. If more time is required to complete the assessment, DELWP will discuss this and advise the water service provider of the extended time.

DELWP's response will be in the form of a letter that:

- advises that further information is required before assessment can occur and/or specifies the extended assessment timeframe
- confirms the works can proceed under the *Utility installations* exemption and that the requirements of this Procedure have been met and may include a requirement for mitigation measures
- states the works do not meet the requirements of this Procedure or do not fit under the *Utility installations* exemption and that a planning permit is required.

If a response from DELWP is not received within the 15 working days timeframe, or time extension as notified, the water service provider can consider the works endorsed and proceed with the native vegetation removal.

The endorsed project will be recorded by DELWP and included in annual reporting.

2.2.6 Native vegetation retention requirement

Native vegetation adjacent to the works area that is at risk of unintentional impact must be protected during the construction activity. The water service provider's standard operational procedures must include measures to avoid adverse impacts to native vegetation and prevent land and water degradation.

If trees are to be protected ensure their tree protection zones (TPZs) are considered as defined

in the *Australian Standard – Protection of trees on development sites* (AS 4970-2009).

Mitigation measures may be included in DELWP's response.

2.2.7 Native vegetation offset requirement

Native vegetation removed for construction must be offset in accordance with the Guidelines, with consideration of the following special arrangement:

- Evidence of the secured offsets (allocated credit extracts or executed first party offset agreements) for all endorsed projects for the financial year must be provided to the relevant DELWP region annually by the 31 August.

This arrangement is in place to enable offset requirements for several construction projects to be combined and offset at a larger more strategic offset site (if possible).

Native vegetation offsets may still be secured prior to, or just after native vegetation removal. This may better align with the water service provider's administrative processes or budget management.

The offset evidence will be recorded by DELWP and included in annual reporting.

Appendix 1 – Quick reference



Appendix 2 – Exempt project endorsement form

Exempt project endorsement form (Water service providers)

For the removal of native vegetation because of construction works in accordance with the *Procedure to rely on the utility installations exemption in planning schemes – Water utility installations*

1. Contact details

Water service provider		E.G. – <i>Better Delivery Outcomes</i>
Project contact	Name	E.G. – <i>Brad Wilson</i>
	Phone	E.G. – <i>(03) 1234 5678</i>
	Email	E.G. – <i>Brad.wilson@betterdeliveryoutcomes.com.au</i>
Project location		<i>Address or description of location</i>
DELWP consultation (if Detailed assessment pathway)		E.G. – <i>Roger Green</i>
Native vegetation report ID		E.G. - <i>350-20180502-003</i>
Measure to protect adjacent vegetation (if relevant)		E.G - <i>The large trees adjacent to the work area will be marked with orange ribbon and the contractor informed they are not to be removed</i>

The information below must be filled out in the relevant sections, unless this information has been included in the *Native vegetation removal report* generated by NVIM and attached to this form.

2. Topographical and land formation

Describe any topographical or land features in the works area. This may include ridges, crests and hilltops, drainage lines, wetlands and waterways, steep slopes, low lying areas, saline discharge areas and areas of existing erosion.

E.G. – *The utility corridor slopes gradually from north to south. There is a drainage line running through the corridor and draining into a wetland area in the adjacent property.*

3. Avoid and minimise statement

Describe why you cannot avoid the removal/destroying/lopping of native vegetation and what you have done to minimise impacts from removing/destroying/lopping native vegetation. This can be done by locating your works in areas where there is no native vegetation or in areas where the biodiversity value of the native vegetation is lower.

E.G. – *All avoid and minimise opportunities have been at a site based (project) level. Opportunities are limited as the upgrade works must be undertaken along the existing infrastructure. We will utilise an existing access track, avoiding the need to create a new one. This will avoid the removal of ~200m² of native vegetation.*

4. Offset statement

Describe how you intend to secure the required offset. This may be by purchasing the offset, or by establishing a new first party offset. Offsets must be secured prior to 31 August.

E.G. – *The General habitat units are readily available from the Native Vegetation Credit Register. We will secure them through an accredited offset broker. An allocated credit extract will be provided to DELWP before 31 August 2019.*

5. Attachments

In addition to the information provided above, please attach the following information:

- Native vegetation removal report
- Site assessment report (if applicable)
- Recent photos that demonstrate current condition and type of native vegetation
- Aerial imagery map(s) clearly identifying which native vegetation will be removed

Glossary

Access track – A track which provides water service providers access to Utility installations for undertaking maintenance. The establishment of a new access track is not considered maintenance under the Procedure.

Assumed loss – Indirect loss of native vegetation. For example, encroachment into tree protection zones, losses from changes to water flows and shading.

Biodiversity value – Values of native vegetation considered in the Guidelines that relate to biodiversity including extent of native vegetation, large trees, native vegetation condition, EVC, sensitive wetlands and coastal areas, strategic biodiversity value, and habitat for rare or threatened species.

Extent of native vegetation – The area of land covered by a patch and/or a scattered tree, measured in hectares.

Habitat hectare assessment – An assessment of native vegetation to determine its condition, extent (in hectares), Ecological Vegetation Class (EVC) and bioregional conservation status. The assessment must be completed by an accredited native vegetation assessor following methodology described in the Vegetation Quality Assessment Manual, Version 1.3 (or its successor) and updated in the Assessor's handbook.

Large tree – A native canopy tree with a Diameter at Breast Height (DBH) greater than or equal to the large tree benchmark for the relevant bioregional EVC. A large tree can be scattered or contained within a patch.

Minor utility installation – As defined in Clause 73.03 of local planning schemes. 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) flow measurement device or a structure to gauge waterway flow;
- d) siphons, water storage tanks, disinfection booster stations and channels;
- e) gas mains providing gas directly to consumers;
- f) a sewage treatment plant, and any associated disposal works, required to serve a neighbourhood;
- g) a pumping station required to serve a neighbourhood;
- h) power lines designed to operate at less than 220,000 volts but excluding any power lines directly associated with an Energy generation facility or Geothermal energy extraction; or
- i) an electrical sub-station designed to operate at no more than 66,000 volts but excluding any sub-station directly associated with an Energy generation facility or Geothermal energy extraction.

Native vegetation – Native vegetation is defined in Clause 73.01 of the Victorian Planning Provisions and all local planning schemes as 'plants that are indigenous to Victoria, including trees, shrubs, herbs and grasses'.

Native vegetation removal report – A report produced by the NVIM or EnSym Native vegetation removal tool (DELWP) which provides a summary of the mapped native vegetation proposed to be removed, destroyed or lopped within a specific area.

No net loss – An outcome where the gain in biodiversity value (the offset) is equivalent to the loss in biodiversity value from the approved removal of native vegetation.

Patch – A patch of native vegetation is:

- an area of vegetation where at least 25 per cent of the total perennial understorey plant cover is native, or
- any area with three or more native canopy trees where the drip line of each tree touches the drip line of at least one other tree, forming a continuous canopy, or
- any mapped wetland included in the Current wetlands map, available in DELWP systems and tools.

Scattered tree – A native canopy tree that does not form part of a patch. A native canopy tree is a mature (able to flower) tree that is greater than 3 metres in height and is normally found in the upper layer of the relevant vegetation type.

Site assessment report – Must be completed by an accredited native vegetation assessor and include:

- A habitat hectare assessment of any patches of native vegetation, including the condition, extent (in hectares), EVC and bioregional conservation status.
- The location, number, circumference (in centimetres measured at 1.3 metres above ground level) and species of large trees within patches.
- The location, number, circumference (in centimetres measured at 1.3 metres above ground level) and species of scattered trees.

Tree protection zone – As defined in the Australian Standard (AS 4970-2009) Protection of trees on development sites

Unauthorised removal – The removal of native vegetation without planning approval, or not in accordance with a native vegetation removal exemption.

Utility service provider – As defined in Clause 73.01 of Local planning schemes. 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 – As defined in Clause 73.03 of Local planning schemes. Land used:

- a) for telecommunications;
- b) to transmit or distribute gas, oil;
- c) to transmit, distribute or store power, including battery storage;
- d) to collect, treat, transmit, store or distribute water; or
- e) 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.

Water service provider – A person other than a public authority or municipal council, having responsibility under an Act for the generation, transmission, distribution, or supply water, drainage or sewerage.

