

Procedure to rely on the utility installations exemption in planning schemes

Electricity distributors - September 2019



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 – Electricity distributors* is approved by the Secretary to the Department of Environment, Land, Water and Planning (DELWP). It enables electricity distributors 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 2 day of November 2019



John Bradley

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

ACCESS TO THE UTILITY INSTALLATIONS EXEMPTION IN LOCAL PLANNING SCHEMES

Any electricity distributor 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 electricity distributor complies with the *Procedure to rely on the utility installations exemption in planning schemes – Electricity distributors*. Requests for written agreement must be sent to nativevegetation.support@delwp.vic.gov.au.

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1. Introduction

Victoria's electricity network enables the transmission and distribution of electricity to residents, businesses and visitors who rely on it. Under the *Electricity Safety Act 1998*, electricity distributors have a responsibility to ensure the network is 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 by electricity distributors used to transmit or deliver power.

Native vegetation must sometimes be removed during the maintenance, augmentation or construction of Utility installations within the electricity 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 usually 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 electricity distributors.

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 transmit, distribute or store power, including battery storage.

A Minor utility installation is a subset of Utility installation and defined in Clause 73.03 of local

planning schemes and includes land used for power lines designed to operate at less than 220,000 volts and electrical sub-stations designed to operate at no more than 66,000 volts (but excludes installations directly associated with an Energy generation facility or Geothermal energy extraction).

Removal of native vegetation under any other relevant exemption

This *Procedure to rely on the utility installations exemption in planning schemes – Electricity distributors* does not apply to native vegetation removal that is exempt from a planning permit due to another relevant exemption (e.g. *Fire protection* exemption) in local planning schemes. However, the principles of avoid and minimise must be applied for all native vegetation removal.

Fire protection exemption

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 keep native vegetation clear of, or minimise 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*.

Electricity distributors 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 2017*
- *Planning and Environment Act 1987* (Permits may still be required for 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.

Electricity distributors relying on 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 electricity distributors to seek and gain written agreement from the Secretary to DELWP to rely on the second part of the *Utility installations* exemption. Any written agreement will require that native vegetation removal is done in accordance with this Procedure.

Scope

This Procedure only applies to electricity distributors that have written agreement from the Secretary to DELWP 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.

This Procedure **only applies** (refer to Table 1) when:

- native vegetation must be removed for maintenance of a Utility installation that is not a Minor utility installation
- native vegetation must be removed to construct a Minor utility installation
- native vegetation must be removed to gain emergency access to Utility installations.

Native vegetation removal to construct a Utility installation that is not considered a Minor utility cannot rely on the *Utility installations* exemption. A planning permit (or equivalent) is required.

This Procedure does not exempt any legislative requirements under the FFG or EPBC acts.

Table 1- Scope of Procedure

	Minor utility	Not Minor utility
Maintenance	Exemption applies No requirement to comply with this Procedure	Comply with this Procedure
Construction	Comply with this Procedure	Exemption does not apply
Emergency access	Comply with this Procedure	Comply with this Procedure

1.3 Evaluation and reporting

Native vegetation regulation will:

- publish this procedure with a list of electricity distributors that have written agreement
- prepare annual reports on 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 electricity distributor is responsible for complying with this Procedure once written agreement has been provided.

DELWP regional staff are responsible for ensuring requirements are met and 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 electricity distributor may lead to the withdrawal, suspension or variation of the written agreement to rely on the *Utility installations* exemption.

2. Procedure requirements

This Procedure describes three types of works:

- maintenance of Utility installations
- construction of Minor utility installations
- emergency access to Utility installations.

Electricity distributors must determine if proposed works are maintenance, construction or emergency access works, and if native vegetation will be removed as a result.

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

Native vegetation removal to the minimum extent necessary to maintain Minor utility installations does not require written agreement from the Secretary to DELWP nor compliance with this Procedure.

2.1 Maintenance

Electricity distributors must comply with these requirements when removing native vegetation to maintain a Utility installation.

Maintenance includes:

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

Maintenance **does not** include the expansion or construction of Utility installations, access or service roads. The removal of large trees (defined in Glossary) is **not** considered maintenance.

2.1.1 Avoid and minimise native vegetation removal

Electricity distributors must avoid native vegetation removal where practical. Any native vegetation removal must be to the minimum extent necessary. 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 areas of known biodiversity significance.

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

2.1.2 Native vegetation to be removed

Native vegetation removed for maintenance must be to the minimum extent necessary and is restricted to:

- native vegetation that has re-established or is encroaching on existing Utility installations or access/service tracks
- 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.

2.1.3 Protect native vegetation to be retained

Native vegetation adjacent to the maintenance area that is at risk of unintentional impact must be protected during the maintenance activity. The electricity distributor's standard operational processes must implement measures to avoid adverse impacts to native vegetation and prevent land and water degradation.

2.1.4 Native vegetation offsets

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

2.1.5 Record maintenance activities

Electricity distributors must keep records of, or document their maintenance activities (location, actions etc.) for auditing purposes. This information may assist when reviewing this Procedure. Consultation with DELWP is not required.

2.2 Construction

Electricity distributors must comply with these requirements and complete the *Exempt project endorsement form* before removing native vegetation to construct a Minor utility installation.

Construction includes:

- the construction of new Minor utility installations including any associated access tracks
- augmentation works associated with existing Minor utility installations.

Native vegetation removal to construct a Utility installation not defined as Minor is not covered by this Procedure.

Native vegetation removal associated with these projects must be addressed during the applicable planning approval process.

2.2.1 Avoid and minimise native vegetation removal

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. Biodiversity experts can assist and if it is not possible to avoid or minimise impacts this must be explained in the required avoid and minimise statement.

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 must be included in the *Exempt project endorsement form* (refer to Appendix 2).

2.2.2 Identify native vegetation to be removed

Native vegetation to be removed 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
- changes to hydrology
- compaction and excavation
- impacts to TPZs in accordance with the *Australian standard 4970-2009 Protection of trees on development sites* (AS 4970-2009). If more than 10 per cent of a TPZ is impacted, the tree is considered lost, unless an arborist determines otherwise.

NVIM Native vegetation removal tool

The NVIM Native vegetation removal tool helps applicants comply with the Guidelines. It is available at <https://nvim.delwp.vic.gov.au/>. Proposed native vegetation removal is identified and mapped in this online tool. The tool will generate a *Native vegetation removal report* and a shapefile of the area of native vegetation to be removed.

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 with DELWP to ensure all impacts associated with the project were considered.

Proposals in the Detailed Assessment Pathway require an assessment by an accredited native vegetation assessor, NVIM native vegetation removal tool cannot be used for these applications.

2.2.3 Consultation

The assessment pathway identified in the *Native vegetation removal report* will determine who the electricity distributor must consult with about impacts on native vegetation. Consultation must be done as early as possible in the project planning stage to 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

Assessment pathway	Consult with
Basic	Electricity distributor's internal resources or ecologist
Intermediate	Electricity distributor's internal resources or ecologist
Detailed	DELWP regions

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 *Native vegetation removal report*
- details of the size and complexity of the works
- a statement of how impacts have been or can be avoided or minimised.

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 design and assessment pathway

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 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

Before native vegetation is removed, the electricity distributor 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 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.

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 electricity distributor 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 electricity distributor can consider the works endorsed and proceed with the native vegetation removal.

In responding to the electricity distributor, DELWP will supply a copy of the endorsed *Exempt project endorsement form* to the relevant local council.

The extent of native vegetation removal that has been endorsed will be recorded by DELWP and included in annual reporting.

2.2.6 Protect native vegetation to be retained

Native vegetation adjacent to the works area that is at risk of unintentional impact must be protected during the construction activity. The electricity distributor'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).

2.2.7 Native vegetation offsets

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).

DELWP will record the offset evidence provided by the electricity distributor and include this in annual reporting.

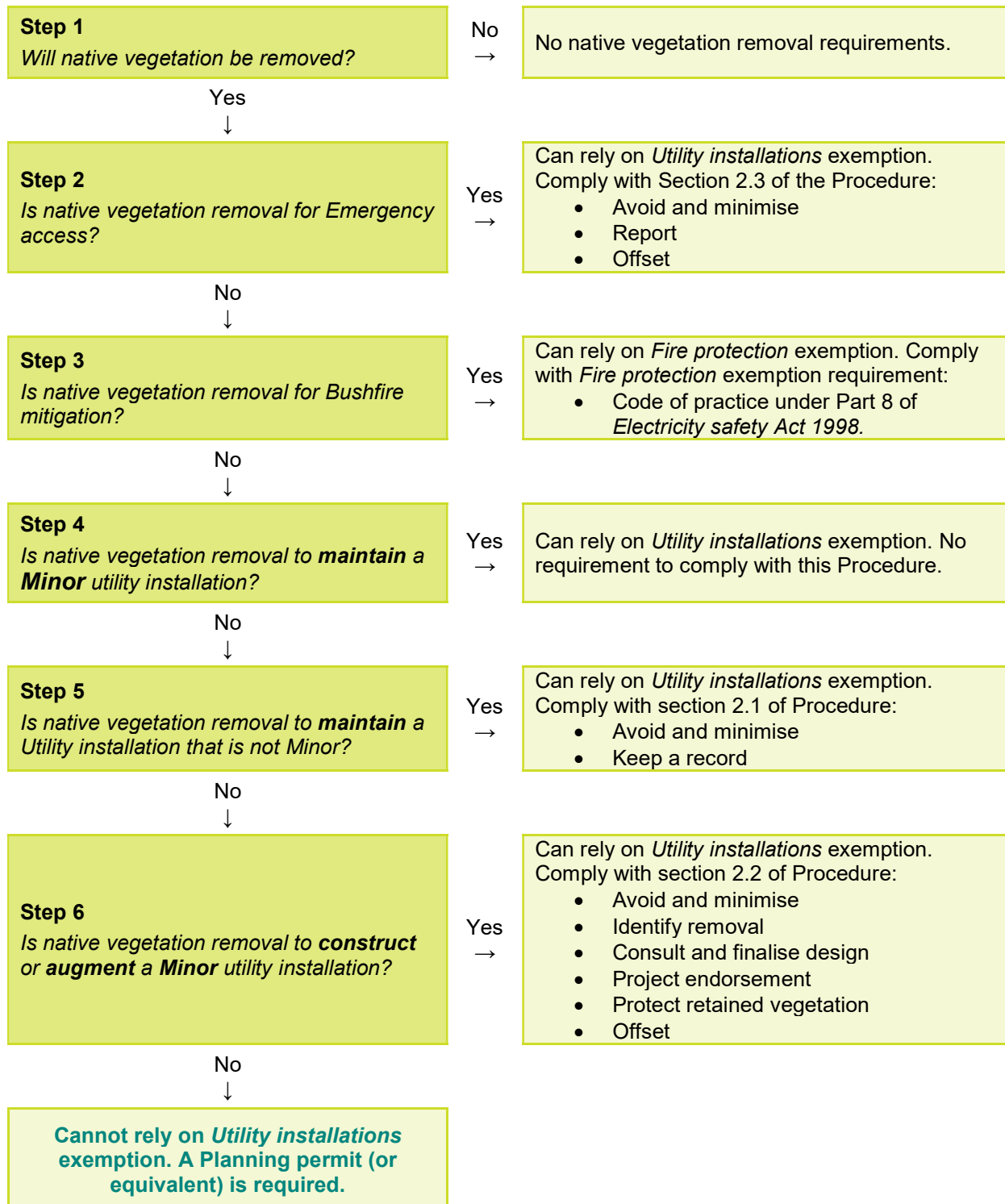
2.3 Emergency access

Native vegetation removed to create access to undertake emergency work must be to the minimum extent necessary. If time allows inform the DELWP region of the need to complete the works before works proceed.

DELWP endorsement is not required but a *Native vegetation removal report* must be provided to DELWP within 5 working days of completing the work.

Native vegetation removal for emergency access must be offset as per Section 2.2.7, with evidence provided to the DELWP region by the 31 August.

3. Appendix 1 – Quick reference



4. Appendix 2 – Exempt project endorsement form

Exempt project endorsement form (Electricity utility installation)

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

1. Contact details

Electricity distributor		E.G. – <i>Better Delivery Outcomes</i>
	Name	E.G. – <i>Brad Wilson</i>
Project contact	Phone	E.G. – <i>(03) 1234 5678</i>
	Email	E.G. – <i>Brad.wilson@betterdeliveryoutcomes.com.au</i>
DELWP consultation (if Detailed assessment pathway)		E.G. – <i>Roger Green</i>
Native vegetation report ID		E.G. – <i>350-20180502-003</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.

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.*

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.*

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.*

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*

5. Glossary

Access track – A track which provides electricity distributors 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.

Electricity distributor – companies that own and operate the electricity transmission and distribution networks in the State of Victoria.

Emergency access – access to works to restore critical power supply or address immediate safety issues where no useable access is available.

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 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.

