

# Procedure to rely on the railways exemption in planning schemes



September 2018

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ISBN 978-1-76047-770-7 (pdf/online)

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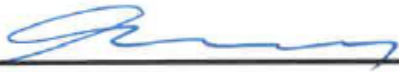
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## APPROVAL

This *Procedure to rely on the railways exemption in planning schemes* is approved by the Secretary to the Department of Environment, Land, Water and Planning (DELWP). It enables rail managers that have written agreement from the Secretary to DELWP to rely on the *Railways exemption* without needing a planning permit to remove, destroy or lop native vegetation, providing all works comply with this procedure.

Approved on the 25 day of September 2018



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**John Bradley**

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

## ACCESS TO THE RAILWAYS EXEMPTION IN LOCAL PLANNING SCHEMES

Any rail manager seeking access to the *Railways exemption* in local planning schemes must obtain written agreement from the Secretary to DELWP. Written agreement will require that rail managers comply with the *Procedure to rely on the railways exemption in planning schemes*.

Where works relying on the *Railways exemption* occur on land under an overlay the rail manager must notify the responsible authority before beginning low impact construction works.



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# 1 Introduction

Victoria's existing rail network enables the delivery of an essential transport service across Victoria. Victoria's residents, businesses and visitors rely on the rail network for travel, and transportation of goods.

It is essential that the rail network operates in a safe and efficient manner. Rail managers have a legal responsibility to ensure the network is operating safely and efficiently.

Rail corridors often contain native vegetation that contributes to Victoria's biodiversity. Native vegetation within the rail network may be the only native vegetation remaining in a landscape, providing connection between fragmented and otherwise isolated patches of native vegetation. In some cases, native vegetation within the rail network is considered critical habitat for the survival of threatened flora and fauna.

Native vegetation helps stabilise rail infrastructure by reducing erosion. It also provides buffers and filter strips that can reduce sediment entering waterways. In addition to environmental values, this native vegetation may also provide aesthetic and cultural value.

## 1.1 Legislative framework

In Victoria, native vegetation removal is regulated under the *Planning and Environment Act 1987* through local planning schemes. A permit is usually required to remove, destroy, or lop native vegetation unless an exemption applies.

For the purposes of this document, the term 'remove native vegetation' includes to destroy and/or lop native vegetation.

The following clauses within local planning schemes contain a *Railways* exemption:

- 42.01 - Environmental significance overlay
- 42.02 - Vegetation protection overlay
- 42.03 - Significant landscape overlay
- 44.01 - Erosion management overlay
- 44.02 - Salinity management overlay
- 52.16 - Native vegetation precinct plan
- 52.17 - Native vegetation

Clauses 52.16 and 52.17 apply to **native** vegetation. The *Railways* 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 an existing railway, or railway access 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*).

Within the overlay clauses (42.01, 42.02, 42.03, 44.01, 44.02), the *Railways* exemption states:

- The requirement to obtain a permit does not apply to:
  - 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 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 exemption in the overlay clauses applies to **all** (native and non-native) vegetation. There is a requirement that the rail manager notifies the relevant responsible authority before vegetation is removed for low impact construction works on land where these overlays occur.

### Removal of native (or non-native) vegetation under any other relevant exemption

This *Procedure to rely on the railways exemption in planning schemes* does not apply to native (or non-native) vegetation removal that is exempt from a planning permit due to another relevant exemption in these clauses. The principles of avoid and minimise should be applied.

Rail managers must ensure native vegetation removal complies with other legislation, including:

- *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 for overlays not listed above)*

Rail managers using this *Procedure to rely on the railways exemption in planning schemes* (Railways exemption procedure) should be familiar with the following publications available on the DELWP website, which 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 Procedure purpose

This Railways exemption procedure outlines the requirements that rail managers must comply with if they have written agreement from the Secretary to DELWP to access the *Railways exemption* under local planning scheme clauses listed in section 1.1 above. This Railways exemption procedure replaces the '*DSE-DOT Approach to the planning permit (under the Victoria Planning Provisions) to remove, destroy or lop native vegetation to maintain the safe and efficient function of roads and railways*'.

This Railways exemption procedure only applies to railways under the direct management of the rail manager with written agreement from the Secretary to access the *Railways exemption*. It exempts the requirement for a planning permit to remove native vegetation when removal is to the minimum extent necessary, and in accordance with this Railways exemption procedure.

This Railways exemption procedure enables native vegetation removed for:

- defined maintenance activities without requiring native vegetation offsets
- defined low impact construction works, where the removal is assessed and offset in accordance with the Guidelines.

This Railways exemption procedure also enables non-native vegetation to be removed for defined maintenance and low impact construction when removal is to the minimum extent necessary.

Native vegetation removal for purposes not defined or described in this Railways exemption procedure cannot rely on the *Railways exemption* and planning approvals are required as applicable.

## 1.3 Monitoring Evaluation Reporting

This Railways exemption procedure will be published on the DELWP website together with a list of rail managers that have written agreement from the Secretary to DELWP to access the exemption.

DELWP Native vegetation regulation will use information provided by rail managers to prepare an annual report on the native vegetation removed for low impact construction works.

DELWP Native vegetation regulation will review this Railways exemption procedure one year after its commencement, and periodically thereafter. This Railways exemption procedure and the written agreement from the Secretary to DELWP will be amended as required.

## 1.4 Compliance

The rail manager is responsible for complying with this Railways exemption procedure once written agreement has been provided by the Secretary.

DELWP regions are responsible for endorsing low impact construction proposals, and for ensuring compliance with requirements.

If a dispute arises concerning the implementation of this Railways exemption procedure, the rail manager and DELWP regions 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 (Director level equivalent), supported as required by the relevant policy teams from each organisation for resolution.

Breaches by the rail manager may lead to the withdrawal, suspension or variation of the written agreement to access the *Railways exemption*.

Unauthorised removal of native vegetation is addressed under the *Planning and Environment Act 1987*.

## 2 Railways exemption procedure requirements

There are two parts to this Railways exemption procedure, with different requirements. The two parts are:

- maintenance
- low impact construction.

Rail managers must determine if the proposed works are maintenance or low impact construction, and if native vegetation will be removed as a result.

Rail managers must ensure full compliance with all relevant requirements. Appendix 1 provides a quick guide to help ensure correct application of this Railways exemption procedure.

### 2.1 Maintenance

Vegetation (native and non-native) removal for maintenance must be to the minimum extent necessary. Native vegetation offsets are not required when vegetation is removed for maintenance.

Maintenance:

- May require the removal or disturbance of vegetation that has re-established, or is encroaching on existing railways, railway access roads, and rail infrastructure.
- May be unique or periodic but is generally considered routine and on-going.
- Prevents deterioration, and conserves the state of the railway, railway access road, or rail infrastructure as near as possible to its original constructed state.
- Includes vegetation removal from areas that were previously offset under Victoria's native vegetation regulations. Evidence must be retained to confirm this.
- Includes native vegetation (excluding large native canopy trees) removal to:
  - maintain existing rail infrastructure, associated rail infrastructure (as defined in the *Rail Management Act 1996*), and existing car parks,
  - maintain existing sight lines,
  - control pest animals and weeds.

- Includes lopping or pruning of trees, provided no more than 1/3 of the foliage of each individual tree is lopped or pruned.

Maintenance does not include:

- expansion of an existing railway, railway access road, or rail infrastructure (includes sight lines)
- creation of new rail infrastructure (including access or service roads, and loopings)
- removal of large trees unless the removal poses a risk to the safety of anyone on, or using the railway track, as per the *Rail Management Act 1996*.

#### 2.1.1 Maintenance requirements

Removal of vegetation for maintenance must comply with these requirements.

##### ***Avoid and minimise native vegetation removal***

Rail managers 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.

##### ***Protect native vegetation to be retained***

Native vegetation that will be retained within or adjacent to the maintenance area that is at risk of unintentional impact must be protected during the maintenance activity. The rail manager's standard operational processes must implement measures to avoid adverse impacts.

##### ***Record maintenance activities***

Rail managers should keep records of, or document their maintenance activities (location, actions etc.) for auditing purposes. This information may assist when reviewing the Railways exemption procedure.

Consultation with DELWP and offsets are not required.

#### 2.1.2 Maintenance best practice

When native vegetation is removed for maintenance, the rail manager should consider the following as best practice.



## Minimisation

Internal review should occur to identify opportunities for minimisation. This is especially important for maintenance programs that involve the removal of native vegetation along long lengths of railway, or through known areas of biodiversity significance.

Internal planning and review processes can use DELWP biodiversity information such as Victoria's Biodiversity Atlas records and species maps to help identify biodiversity values. DELWP regions may be able to assist as needed.

The planning and review process should also identify and consider potential impacts to matters listed under the FFG Act and EPBC Act.

## 2.2 Low impact construction works

Vegetation (native and non-native) removal for low impact construction must be to the minimum extent necessary. The requirements detailed below must be complied with. Native vegetation offsets are required when native vegetation is removed for low impact construction works.

Low impact construction works are defined as works that require the removal of less than 0.5 hectares of native vegetation that are done to enhance the safe and efficient function of an existing railway, railway access track or railway infrastructure.

Construction works that require native vegetation removal of 0.5 hectares or more, are not covered by this Railways exemption procedure. These works require a planning permit.

### 2.2.1 Low impact construction requirements

Removal of native vegetation for low impact construction works must comply with these requirements.

#### Identify the native vegetation to be removed

Native vegetation removal must be identified in accordance with the Guidelines. Consider the extent of any patch of native vegetation and any scattered tree. Also consider past removal from previous project stages, and assumed loss 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 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 have a significant impact on the survival of the tree.

#### Native vegetation removal tool

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

#### Native vegetation removal report – No offsets

If the *Native vegetation removal report* states that no offsets are required, only the avoid and minimise requirement must be complied with. The report should be filed for future reference.

## Avoid and minimise

Native vegetation removal must be avoided whenever possible. Impacts to native vegetation that cannot be avoided must be to the minimum extent necessary. Context sensitive design must be considered and applied in the planning and design of low impact construction works. This ensures the final design fully considers avoiding and minimising adverse impacts on existing biodiversity values.

Opportunities to avoid and minimise impacts should focus on biodiversity values identified in the *Native vegetation removal report* and specifically on the areas with higher values. Table 1 describes possible biodiversity values that may be impacted in each assessment pathway.

Table 1 – Biodiversity values

| Assessment pathway | Biodiversity values to consider when avoiding and minimising impacts  |
|--------------------|---|
| Basic              | <ul style="list-style-type: none"><li>• Native vegetation extent</li><li>• Native vegetation condition</li><li>• Strategic biodiversity value</li></ul> |

|              |  |
|--------------|--|
| Intermediate | As for basic, and; <ul style="list-style-type: none"> <li>• Large trees</li> <li>• Sensitive wetlands and coastal areas</li> <li>• Endangered ecological vegetation classes</li> </ul> |
| Detailed     | As for basic and intermediate, and; <ul style="list-style-type: none"> <li>• Habitat for Victoria's rare or threatened species</li> </ul>  |

An avoid and minimise statement that describes how impacts on biodiversity values were avoided and minimised must be included in the endorsement form. Opportunities to avoid and minimise impacts should be discussed with biodiversity experts as described in the following section. If avoid and minimise is not possible this must be explained in the statement.

### Consult

#### *Notify local council*

During the planning of works, the rail manager must notify the local council when native vegetation removal will occur on land affected by a planning overlay listed in Section 1.1.

Local council cannot object to the proposed vegetation removal when undertaken in accordance with this procedure. Notifying council provides an opportunity to discuss or better consider any relevant community concerns.

#### *Consult with biodiversity experts*

The assessment pathway identified in the *Native vegetation removal report* will determine who the rail manager must consult with about impacts on biodiversity values. Table 2 details the requirements. 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.

Consultation with DELWP regions may help:

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

Table 2 – Consultation

| Assessment pathway | Consult with                    |
|--------------------|---------------------------------|
| Basic              | Rail manager's internal experts |
| Intermediate       | Rail manager's internal experts |
| Detailed           | DELWP regions                   |

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*
- size and complexity of the works
- a statement of how impacts have been or can be avoided or minimised and if there is an opportunity to consider context sensitive design.

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.

### **Final design and assessment pathway**

Once the project design is finalised, 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 this report to the *Exempt project endorsement form*.

#### *Detailed Assessment Pathway*

A site assessment is not required as modelled condition scores will be used. If preferred, a site assessment can be done to replace the modelled condition score.

In this assessment pathway, a shapefile of the proposed native vegetation removal must be created and submitted to DELWP at

[EnSymNVRtool.support@delwp.vic.gov.au](mailto:EnSymNVRtool.support@delwp.vic.gov.au).

DELWP will provide a *Native vegetation removal report* that includes biodiversity impact information

and offset requirements. Attach this report to the *Exempt Project Endorsement Form*.

### **Exempt Project Endorsement Form**

This form must be completed and submitted to the relevant DELWP region. The form is included in Appendix 2. 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*
- offset statement that demonstrates a compliant offset can be secured.

### **Project endorsement**

Before native vegetation is removed, the rail manager must seek endorsement from the DELWP region that the native vegetation removal can proceed under the *Railways* exemption and that it meets the requirements of this Railways exemption procedure.

Once a complete *Exempt Project Endorsement Form* has been received the DELWP region will usually provide a written response within 15 working days. If more time is required to complete the assessment, DELWP will discuss and then advise the rail manager of the extended time. If a site assessment has been included this will be reviewed by the DELWP region during this time.

All required information must be included with the *Exempt Project Endorsement Form* before DELWP will review it.

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 *Railways* exemption and that the requirements of this Railways exemption procedure have been met and may include a requirement for mitigation measures.
- states the works do not meet the requirements of this Railways exemption procedure or do not fit under the *Railways* exemption and that a planning permit is required.

If a response from DELWP is not received within the 15-working day time frame, or time extension as notified, the rail manager can consider the works endorsed and proceed with the native vegetation removal.

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

### **Offset**

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

- evidence of the secured offsets (allocated credit extract or executed first party offset agreement) for all the endorsed projects for the financial year must be provided to the relevant DELWP region annually by the 30 September.

This arrangement is in place to enable offset requirements for several small removal events to be combined and offset at a larger more strategic offset site.

DELWP will record the offset evidence provided by the rail manager and include this in annual reporting.

# Appendix 1 – Quick reference

## Does the Railways exemption procedure apply?

### 1. Will native vegetation be removed?

- No – Do not apply this Railways exemption procedure.
- Yes – Proceed to Question 2.

### 2. Is the native vegetation removal exempt under an exemption other than the *Railways exemption*?

- Yes – Apply avoid and minimise principle and comply with relevant exemption requirements.
- No – Proceed to Question 3

### 3. Is the native vegetation removal for maintenance?

- Yes – Apply the Railways exemption procedure - maintenance requirements
- No – Proceed to Question 4

### 4. Is native vegetation removal for low impact construction works (<0.5 ha)?

- Yes – Apply the Railways exemption procedure – low impact construction requirements.
- No – Apply for a planning permit or other approval to remove native vegetation

## Process guide

| Maintenance requirements   | Timing   |
|--|--|
| 1. Avoid and minimise  | → Early in development of maintenance regime                                 |
| 2. Protect retained vegetation (if required)   | → Before any native vegetation removal starts                                |
| 3. Document or record  | → As per rail manager's processes  |
| Low impact construction requirements   | Timing   |
| 1. Identify proposed native vegetation to be removed – Native vegetation removal report (preliminary)  | → Early in project planning  |
| 2. Avoid and minimise impacts and consult with internal biodiversity experts, or DELWP.<br><b>Remember:</b> Notify local council when removal is from land covered by a planning overlay | → Early in project planning, and as soon as potential impacts are identified |
| 3. Map final native vegetation removal based on final design – Native vegetation removal report (final)  | → Once project's final design is known                                       |
| 4. Submit required information to DELWP for endorsement  | → Once <i>Exempt Project Endorsement Form</i> is completed.                  |
| 5. Protect retained vegetation (if required)   | → Before any native vegetation removal starts                                |
| 6. Secure offset   | → Before September 30  |

# Appendix 2 – Exempt Project Endorsement Form

## Exempt Project Endorsement Form

For the removal of native vegetation for low impact construction works in accordance with the *Procedure to rely on the railways exemption in planning schemes*.

### 1. Contact details

|   |       |  |
|---|-------|--|
| Rail manager  |       | <b>E.G.</b> – <i>Better Rail Outcomes</i>                  |
| Project contact                                     | Name  | <b>E.G.</b> – <i>Brad Wilson</i>                           |
|   | Phone | <b>E.G.</b> – <i>(03) 1234 5678</i>                        |
|   | Email | <b>E.G.</b> – <i>Brad.wilson@betterrailoutcomes.com.au</i> |
| DELWP consultation (if Detailed assessment pathway) |       | <b>E.G.</b> – <i>Roger Green</i>                           |
| Native vegetation report ID                         |       | <b>E.G.</b> - <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.**

### 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 rail reserve slopes gradually from north to south, with a steep batter running away from the track. There is a drainage line running beneath the track, through the rail reserve and draining into a wetland area in the adjacent property.*

### 3. Avoid and minimise statement

Describe why you cannot avoid the removal of native vegetation and what you have done to minimise impacts from removing 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 track widening project must be undertaken along the existing track. Retaining walls have been used to narrow the base of the batter by 2 metres, which minimises the amount of native vegetation removed by 0.1 hectares. We will utilise an existing access track, avoiding the need to create a new one.*

### 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 30 September.

**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 30 September 2018.*

### 5. Attachments

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

- Native vegetation removal report
- Site assessment report (if conducted)
- Recent photos that demonstrate current condition and type of native vegetation

# Glossary

**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.

**Existing railway** – A railway track that is currently capable of being used by rolling stock.

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

**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.

**Low impact construction works** – Any project not classified as maintenance, and where the extent of native vegetation removal is less than 0.5 hectares (as per Section 2.2)

**Maintenance** – Native vegetation removal required to keep existing infrastructure functioning as near as possible to its original constructed state (as per Section 2.1)

**Native vegetation** – Native vegetation is defined in Clause 72 of the Victorian Planning Provisions and all local planning schemes as ‘plants that are indigenous to Victoria, including trees, shrubs, herbs and grasses’.

**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.

**Rail infrastructure** – A facility that is used to operate a railway as defined in the *Rail Management Act 1996*.

**Rail manager** – The organisation responsible for the management of rail infrastructure and provided with written agreement from the Secretary to DELWP.

**Scattered tree** – A native canopy tree that does not form part of a patch

**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.

**Unauthorised removal** – The removal of native vegetation without planning approval, or in accordance with a native vegetation removal exemption.

