

Native Vegetation Newsletter 5

Update on the implementation of the 2017 Native Vegetation Regulations – October 2021



This newsletter contains recent updates from the Native Vegetation Regulation (NVR) team and addresses several commonly submitted queries relating to implementation of the regulations.

Of note, this newsletter outlines the revised mapped wetland policy, superseding information contained in Native Vegetation Newsletter 3 (November 2019) and the Assessor's Handbook (Version 1.1).

Support emails

To help us respond to queries as quickly as possible please submit your emails to the address that best matches your enquiry:

- Requests to generate a report in EnSym:
EnSymNVRtool.Support@delwp.vic.gov.au
- Queries regarding the NVR, the implementation of the Native Vegetation Guidelines, and the NVIM native vegetation removal and offset tools:
NativeVegetation.Support@delwp.vic.gov.au
- Queries regarding the assessment, management and establishment of offset sites:
NativeVegetation.OffsetManagement@delwp.vic.gov.au
- Queries regarding native vegetation credits, registering an offset site or the Native Vegetation Offset Register:
NativeVegetation.OffsetRegister@delwp.vic.gov.au
- Queries regarding payments and invoicing relating to offset sites:
Nativevegetation.Offsetpayments@delwp.vic.gov.au

- Queries regarding the Vegetation Quality Assessment (VQA) methodology and competency checks:
Habitat.Hectares@delwp.vic.gov.au

Online training

An online training course which provides an overview of the NVR is available online. This course is targeted at responsible and referral authorities who assess applications to remove native vegetation under Clause 52.16 or 52.17, Planning Scheme Amendments or other approval mechanisms.

The course may also be useful for consultants who prepare planning permit applications to remove native vegetation.

To request access to the training, please email NativeVegetation.Support@delwp.vic.gov.au

VQA competency checks

The NVR team has delivered two VQA competency check sessions this year, with additional events proposed following the easing of COVID-19 related restrictions.

Any accredited assessors that have not been able to complete a refresher course, due to either COVID-19 restrictions or the resulting backlog in session bookings, will retain their accreditation until sufficient opportunity to complete a refresher session has been provided.

Assessors with lapsed accreditation or those seeking initial accreditation should email Habitat.Hectares@delwp.vic.gov.au to join the session waiting list.

What's new

The NVR team has implemented the following key updates since publication of the last Native Vegetation Newsletter in August 2020.

Reporting

The following reports have been published on the Department of Environment, Land, Water and Planning (DELWP) native vegetation website (<https://www.environment.vic.gov.au/native-vegetation/native-vegetation>):

- *Annual Report 2019 – 2020 - A report on the operations of the native vegetation removal regulations.*

The third annual report, presenting an overview of the NVR during the 2019/20 financial year.

- *Native Vegetation Removal Regulations - Crown Land Exemption - Removal and counterbalance activities 2019/20.*

The second report prepared under the Crown Land Exemption Procedure, outlining the removal and counterbalancing activities undertaken by DELWP and Parks Victoria during the 2019/20 financial year.

- *Native Vegetation Regulations - Three-yearly Report July 2017 – June 2020.*

An evaluation of the operation of the NVR during the three-year period between July 2017 and June 2020. This report incorporates the results of a survey aimed at evaluating the functionality and effectiveness of the systems and tools supporting the NVR.

A fourth annual report and third Crown Land Exemption report are due to be published later this year.

Utility installations exemption - Procedure for water service providers

On 20 January 2021, the Secretary to DELWP approved the *Procedure to rely on the utility installations exemption in planning schemes – Water service providers*. Similar to the procedure established for electricity distributors in 2019, the new procedure allows water service providers to access the second component of the Utility Installations Exemption relating to the maintenance or construction of a Utility Installation. Access to this component is contingent on a water service provider attaining a one-off written agreement from the Secretary to DELWP and complying with the procedure.

The procedure and a list of water service providers with written agreement is available on the DELWP website.

Crown Land Exemption update

Following the gazettal of Amendment VC185 in April 2021, the Great Ocean Road Coast and Parks Authority (GOR Authority) has been granted access to the Crown Land Exemption. The Authority was established in December 2020 and is responsible for managing a wide variety of public land from National Parks to coastal beaches and town foreshores.

The Crown Land Procedure will be updated to reflect this change and confirm GOR Authority's responsibilities relating to native vegetation removal and counterbalancing activities.

Compliance and enforcement toolkit

The *Native Vegetation Regulations Compliance and Enforcement Toolkit - A Guide for Councils* has been published on the DELWP website.

The Toolkit compliments the Compliance and Enforcement Strategy document prepared in 2017, providing a summary of the statutory obligations regarding native vegetation removal and assisting responsible authorities achieve outcomes consistent with the objectives of the *Planning and Environment Act 1987*.

The Toolkit has also promoted the establishment of a Native Vegetation Compliance Community of Practice (CoP); a resource and knowledge sharing platform for Victorian State and Local Government staff involved in native vegetation regulation and compliance.

The CoP is hosted by the Municipal Association of Victoria (MAV). Current staff of Victorian Councils and relevant Victorian Government departments can request access to the CoP through the following link - <https://forms.office.com/r/a2BHiMf2pa>.

Update to Conservation Work Exemption guidance

The NVR team has updated the guidance material supporting the Conservation Work Exemption, with the aim of further clarifying the application process and improving the comparison assessment methodology. The revised guidance note and a template for small-scale applications is available on the DELWP website.

Additional road safety programs under the Road Safety Exemption

The *Procedure to rely on the road safety exemption in planning schemes* affords special provisions to specific road safety programs that have either been listed in the procedure (e.g. Towards Zero) or subsequently approved for inclusion by the Secretary to DELWP.

In addition to those listed in the procedure, the following road safety programs have been recognised:

- Department of Transport Targeted Road Safety Works Program - Approved 26th October 2020.
- Australian Government Road Safety Program - Approved 25th February 2021.

Policy advice

EnSym data submissions

The NVR team receives a large number of EnSym data submissions daily, including data submitted for:

- Projects subject to the Detailed Assessment Pathway, or those using site assessed condition scores under the Basic or Intermediate pathways.
- Projects subject to the NVR within the Melbourne Strategic Assessment (MSA) area.
- Projects subject to the 2013 regulations.
- Specific requests, including staged NVR reports and species exclusions/inclusions.

The team aims to provide EnSym reports within five days of receiving data, with average response times ranging between 1-2 days.

A large proportion of the datasets received do not comply with the data submission standards (https://www.environment.vic.gov.au/data/assets/pdf_file/0014/91121/EnSym-spatial-data-standards.pdf). Commonly encountered issues include:

- Split habitat zones that need to be merged in accordance with the advice outlined in Section 3.10.1 of the Assessors Handbook and Pg.3 of Native Vegetation Newsletter #1 (https://www.environment.vic.gov.au/data/assets/pdf_file/0028/514594/1_NVR-newsletter-March-2018_final.pdf).
- Intersecting/overlapping polygons.
- Self-intersecting polygons.
- Incorrect area values in the HH_A attribute field.
- Duplicate zones - polygons with the same combination of values in the HH_SI and HH_ZI attribute fields.
- Mapped Wetlands not being accounted for.

To address this issue, the team has recently developed a quality assurance tool for ArcGIS that allows users to test their data prior to submission.

Requests to access the tool and supporting guide can be submitted to EnSymNVRtool.Support@delwp.vic.gov.au.

NVIM Native Vegetation Removal Tool

The NVIM Removal Tool has recently experienced technical issues, with reports of users occasionally receiving a '502 Error' when reaching the final stage of the process and clicking 'Download report'.

The issue is being investigated and should be resolved shortly. In the meantime, users encountering this error should take the following steps:

1. Draw the extent of native vegetation removal in NVIM.
2. Use the 'Export' button to save the extent as a Shapefile (or multiple Shapefiles if both remnant patches and scattered trees are mapped).
3. Send the Shapefile(s) to EnSymNVRtool.Support@delwp.vic.gov.au for processing, with a note advising of the NVIM error.

Recent changes to the FFG Act Threatened List

The *Flora and Fauna Guarantee Amendment Act 2019* came into effect on 1st June 2020, leading to the publication of the FFG Act Threatened List in August 2021. This list supersedes the Victorian Threatened Species Advisory Lists (fauna, flora and invertebrates).

At present, the NVR define rare or threatened species according to the Advisory Lists. Habitat Importance Maps (HIMs) exist, and Species Offsets can be triggered, for the majority of plants and animals classified as Rare, Critically Endangered, Endangered or Vulnerable on the Advisory Lists.

The existing HIMs, based on the Advisory Lists, will continue to apply for now. In the longer term, the HIMs will be updated to reflect the new FFG Act Threatened List. The NVR team is in the process of planning how best to implement this transition.

It is acknowledged that the FFG Act Threatened List and supporting Conservation Status Assessment (CSA) process provide contemporary information regarding the conservation status of plants and animals with HIMs currently incorporated into the NVR. Until such time the HIMs are updated to reflect the new FFG list, Species Offsets may be triggered for taxa which have had their conservation status downgraded, are classified as extinct, or are taxonomically invalid. In such cases, it is recommended that proponents contact NativeVegetation.Support@delwp.vic.gov.au to discuss the process of excluding a HIM from consideration in line with Section 11.1.1 of the Native Vegetation Guidelines.

Revised Mapped Wetland Policy

The NVR Team has undertaken a review of how Mapped Wetlands are managed under the NVR, with the aim of better aligning existing policy with the following objective:

Native vegetation assessments of periodically inundated wetlands account for ephemeral wetland-associated native vegetation, which may be undetectable or degraded at the time of site assessments.

Since review of the NVR in 2013, applicants have been required to classify Mapped Wetlands included on the Current Wetland layer as a remnant patch of native vegetation. Between 2013 and 2017, policy allowed applicants to discount Mapped Wetlands covered by a hardened, artificial surface.

The 2017 Guidelines introduced new criteria by which Mapped Wetlands could be removed from consideration. This advice, outlined in the Assessors Handbook, was superseded by information published in Native Vegetation Newsletter 3 (November 2019). The 2019 update shifted the focus of protection away from wetland values and towards wetland-associated native vegetation.

The revised Mapped Wetland policy, which supersedes the information contained in Native Vegetation Newsletter 3 (November 2019) and the Assessor's Handbook (Version 1.1), is outlined below.

Revised Policy

Wetland-associated native vegetation can be difficult to identify and accurately assess at the site level, as it responds quickly to changes in environmental condition, especially rainfall. During dry periods wetland plants may not be easy to detect, as they may be present in a form that is not expressed above ground (e.g. as rhizomes or corms).

Most wetland plant species are adapted to dry conditions and have a strategy to persist between periods of inundation. When inundated, typically in winter and spring at seasonal wetlands, propagule dormancy breaks, with wetland vegetation responding quickly.

As such, Mapped Wetlands in the Current Wetland layer are treated as a patch of native vegetation, using the modelled condition score (from the *Native vegetation condition map*). The site-assessed condition score can be used for the Mapped Wetland if a site assessment (in accordance with Section 6.5 of the Guidelines) is carried out when the wetland has been inundated or waterlogged for at least one month, when native vegetation associated with the wetland is present and can be accurately assessed.

The native vegetation regulations provide for Mapped Wetlands (or part thereof) to be excluded from the assessment process when considering planning applications to remove native vegetation. The table below describes the situations when a Mapped Wetland (or part thereof) may be excluded from the assessment process, the evidence required by the applicant and who must assess and approve the proposal.

If a Mapped Wetland (or part thereof) is excluded from the assessment process, any native vegetation present within the Mapped Wetland area must still be assessed in accordance with the Guidelines.

In assessing impacts, proponents must consider how a Mapped Wetland area as-a-whole might be affected – i.e. consider consequential loss, not just the direct impact area. As different parts of a wetland are connected hydrologically it may not be possible to isolate the effects of an impact in one part of a wetland (e.g. turbidity or other water quality impacts).

Table 1. Process for excluding a Mapped Wetland from the assessment process

Mapped Wetland (or part thereof) may be excluded from the assessment process if:	Evidence required from applicant	Approval authority
<p>1. Hardened, artificial surface</p> <p>The Mapped Wetland area is covered by a hardened, artificial surface, for example, a roadway.</p>	<p>Aerial photography and on-ground photographs.</p>	<p>Responsible authority, with supporting evidence included in the permit application.</p>
<p>2. Mapped wetland is geospatially misaligned</p> <p>Due to orthorectification issues, the Mapped Wetland is misaligned with its on-ground location.</p> <p>In some instances, a geospatially misaligned Mapped Wetland polygon may encompass part of the on-ground wetland it was intended to identify. In such circumstances, the entire area bound by the high-water mark of the on-ground wetland should be considered a remnant patch, unless one of the other exclusion scenarios applies.</p>	<p>Aerial photography.</p> <p>It must be obvious that the Mapped Wetland is spatially misaligned, as opposed to the mapped area supporting a dry, indiscernible wetland.</p>	<p>Written agreement from the Secretary to DELWP. Submit evidence to:</p> <p>NativeVegetation.Support@delwp.vic.gov.au</p>
<p>3. Artificial waterbodies or permanently inundated wetlands</p> <p>The Mapped Wetland is an artificial waterbody or is permanently inundated¹.</p> <p>Artificial waterbodies may include, but are not limited to, aquaculture ponds, sewerage treatment ponds and constructed dams. Artificial waterbodies do not include natural wetlands modified through human intervention, where natural wetland values may persist.</p> <p>Only areas of permanent inundation not subject to periodic wet-dry cycles may be removed from consideration. This exemption does not apply to areas subject to periodic wet-dry cycles e.g. ephemeral areas fringing permanent waterbodies.</p>	<p>Aerial photography, on-ground photographs and any other evidence to support classifying a Mapped Wetland area as being artificial or permanently inundated.</p> <p>It must be obvious that the Mapped Wetland area is artificial or permanently inundated (i.e. not subject to periodic wet-dry cycles). Where the potential inundation or waterlogging period is debatable, applicants are required to commission a supporting hydrological assessment, undertaken by a suitably qualified person.</p>	<p>Written agreement from the Secretary to DELWP. Submit evidence to:</p> <p>NativeVegetation.Support@delwp.vic.gov.au</p>
<p>4. Mapped Wetland area cannot support wetland-associated native vegetation</p> <p>The Mapped Wetland area is physically incapable of retaining surface water or being waterlogged for more than one month². This may include areas:</p> <ul style="list-style-type: none"> • Where a Mapped Wetland is sited on a slope or other inconsistent topography. • That have been effectively drained or had their natural water source removed through legal actions. <p>Past and existing cropping or grazing activity does not remove the capacity for a Mapped Wetland area to support wetland-associated native vegetation.</p> <p>Other factors resulting in a Mapped Wetland area being incapable of supporting wetland-associated native vegetation will be assessed on a case-by-case basis.</p>	<p>Aerial photography, on-ground photographs and any other evidence to support the determination.</p> <p>Where the potential inundation or waterlogging period is debatable, applicants are required to commission a supporting hydrological assessment, undertaken by a suitably qualified person.</p>	<p>Written agreement from the Secretary to DELWP. Submit evidence to:</p> <p>NativeVegetation.Support@delwp.vic.gov.au</p>

1 - The 2016 DELWP publication 'The Victorian wetland classification framework 2014' defines wetlands as permanent if they retain water for longer than 12 months. Such waterbodies never or rarely dry (i.e. hold water at least 8 years in every 10); however, levels may fluctuate within or between years.

2 - The classification framework defines periodically inundated wetlands (seasonal, intermittent or episodic) as being capable of holding water for at least one month.

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