

Future directions for native vegetation in Victoria – Submitted to Department of Sustainability and Environment (DSE) for Review of Victoria’s native vegetation permitted clearing regulations 2012.

The National Trust recognises the need to reduce the risk of bushfire to lives and property. People’s safety must always be the priority in the event of a bushfire. We believe it is also important to find a balance between minimising the risk of an extreme bushfire event, providing for compatible community use and preserving the natural environment, biodiversity and landscape values.

In November 2009 we wrote to the government expressing our deep concern about the extensive removal of vegetation without permit. We felt that so-called ‘10/30 right’ was an inappropriate reaction with little or no regard for long-term consequences. Of particular concern was permit exemption for clearing along boundary fence lines. In many cases natural regeneration has been aided by double fencing, and much of the replanting work undertaken by individuals and community groups such as Landcare, has been along property boundaries. Linear plantings along fencelines, including regeneration strips and windbreaks, are often important landscape elements and wildlife corridors, and their loss threatens both the aesthetic values of landscape and its biodiversity.

This present submission relates specifically to Clause 52.48. It is one area of concern, and is an area for improvement in environmental outcomes, with reduced costs and more certainty for landholders and the community.

Clause 52.48 was introduced into the *Victoria Planning Provisions* and all planning schemes on 18 November 2011. Clause 52.48 allows the removal, destruction or lopping of vegetation to reduce fuel load around existing buildings used for accommodation and adjacent to fences on property boundaries without requiring a planning permit. These permit exemptions for vegetation removal only apply to buildings and fences existing or approved before 10 September 2009.

The following describes a recent case where Spotted Gums (*Corymbia maculata*) on Council Reserve, which are listed in the City of Casey Significance Tree Study were, and still are, threatened by the application of Clause 52.48. This case has exposed deficiencies in the application of the Bush Fire Exemption 52.48 and the circumnavigation available to property owners to remove significant vegetation.



Spotted Gums (*Corymbia maculata*) on Council Reserve; 121 Old Coach Road, Berwick.

Photo: August 2012

The Spotted Gums (*Corymbia maculata*), which were planted in Old Coach Road, Berwick nearly 50 years ago and are now 20-25 metres high, are included in the Casey Significance Tree Study and are protected under an Environmental Significance Overlay (ESO). The ESO provides that a permit is required to remove, destroy or lop any vegetation, including dead vegetation unless certain exemptions apply, including the exemption for emergency works.

The trees were planted in 1966 by Mr Peter Lawton and Mr Maurie Bashford. At that time both men were members of the Berwick Tree Society. In 2006 the National Trust Casey Cardinia Branch members contributed many volunteer hours assisting the Casey Council to compile their Register.

The City of Casey's Parks and Gardens Department sought to cut down 28 trees on grounds of safety for an adjoining property owner (De La Rue). The property owner has been raising issues of falling limbs with Council since 2007.

The National Trust Casey Cardinia Branch became aware that Council planned to remove all the Significant Trees in Old Coach Road, and wrote to the Mayor and Councillors on 6 August 2012, requesting that the Council adheres to their own planning controls and not attempt to circumnavigate the controls.

In August 2012 the Council declared itself an exemption from permits under the ESO and gave notice of intention to remove the trees. The Residents, Ratepayers & Friends of Berwick Village (RRFBV) obtained their own independent Arborist Report. This Report from David Caldecott of Arbor Co. concluded:

All Spotted Gums have previously been well cared for and managed (believed to be by the City of Casey). All Trees have been well pruned back from over the property line. All dead wood has been consistently removed and very well pruned.

On 13 August the Trust joined RRFBV as a party to proceedings at VCAT to seek an interim order against removal. Casey Council, the Trust and RRFBV were joined at the Hearing by Mr De La Rue. At the Tribunal hearing we provided expert evidence by Dr Greg Moore, Chair of our Expert Tree Committee. Dr Moore's opinion was that:

Generally the trees are in good condition. I agree with both arborists who report that the tree structures are generally very good to excellent (Caldecott) and that they are structurally sound without significant defects (Galbraith). Both arborists regard the trees as healthy and vigorous and again I concur... These trees have been pruned and managed over a long period of time, so that there are few if any major encroachments over the boundary of 121 Old Coach Road, which would suggest that they are not dangerous. There is little likelihood of property damage or of injury in the unlikely event of major limb failure.

The Tribunal agreed with our appeal, stating that it was "not satisfied that such exemption would permit the removal of any tree, let alone the entire row of trees". However it confirmed the 10/30 bushfire exemption, such that trees within 10 metres of the dwelling could be removed. The effect of the interim order was to preserve the *status quo* until a determination on the merits of the full application could be made.

The neighbouring property owner (and belatedly the Council) indicated that they sought to rely on Clause 52.48 Bushfire Protection Exemptions. Clause 52.48-2 of the Casey Planning

Scheme provides that notwithstanding any other provision of the planning scheme, vegetation may be removed “for a combined maximum width of 4 metres either side of an existing fence on a boundary between properties in different ownership”.

Harwood Andrews lawyers considered that our argument that the trees could *not* be removed under this exemption to be strong. On 21 August three trees were legally cut down based on 10/30 bushfire provision. The same day there was a City of Casey Council meeting and Cr Judy Owen placed a Notice of Motion asking that all works be delayed on the Old Coach Road trees until after the next VCAT hearing.

On 5 September trees were planted along the boundary line by De La Rue (see photographs above), 1.2 metres from the fence line. No notice of intention to undertake such a planting was provided to the parties or to VCAT. Harwood Andrews concluded that the planting of trees removed the ‘clear land’ on the side of the De La Rue’s property and therefore the 52.48 exemption *will* apply and that our arguments *will fail accordingly* on the basis that there is not clear land on the other side of the fence.



Spotted Gums (*Corymbia maculata*) on Council Reserve; 121 Old Coach Road, Berwick. Photo on left taken August 2012, photo on right taken September 2012 of new trees planted by the property owner.

We consequently decided to withdraw our application to VCAT. The remaining trees may be legally removed along the property boundary. These trees remain subject to the ESO and

Council has agreed to seek a permit for their removal. Based on legal advice the Trust has taken the matter as far as reasonably possible.

On the matter that we initially took to VCAT we have been successful: Council has agreed to seek a permit for tree removal for non-52:48 exempt trees. However, the planting of trees by De La Rue after the Interim Order was a deliberate move calculated to overcome our strong arguments against the 52:48 exemptions. The matter has exposed deficiencies in the application of the Bush Fire Exemption Clause 52.48 and the circumnavigation available to property owners to remove significant vegetation. It has also exposed the financial burden of VCAT applications on community groups and not-for-profit organisations, such as the Trust.

The original purpose of providing an exemption to clear four metres either side of the fence was to provide access for landowners to maintain boundary fences. Therefore, we seek changes to the provisions in clause 52.48 so that 1) significant vegetation can be protected; and 2) there is more certainty for landholders and the community. We also advocate reducing costs for applications to VCAT and that loopholes are closed. The circumnavigation that was applied in this case was clearly not anticipated when the legislation was passed.

Any exemption should be based on avoiding vegetation removal where possible, or at least minimising vegetation losses, particularly where Significant Trees have been identified and, in this case, protected by the local planning scheme. Clearing controls should not be 'one size fits all'.

The fire protection objective for permitted clearing is often considered alongside a number of other objectives in the planning system, including the implications of vegetation removal on biodiversity, visual amenity, cultural heritage, land protection and water quality. This approach is intended to enable integrated decision making about vegetation removal. However, in practice there can be confusion about how these objectives should be considered when determining permit conditions. The lack of clarity and demarcation of responsibilities for these varied native vegetation objectives has created unnecessary complexity and costs for landholders, and reduced accountability for decision makers.¹

¹ Future directions for native vegetation in Victoria. Review of Victoria's native vegetation permitted clearing regulations Consultation paper, September 2012, p16.