

7 December 2007



Manager Environmental Services
VicRoads
60 Denmark Street
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By email roadsides@roads.vic.gov.au

Dear Manager Environmental Services

**Submission to VicRoads Code of Practice for Roadside Vegetation Removal –
Background Paper**

The Environment Defenders Office (Victoria) Ltd ('EDO') welcomes the opportunity to make a submission with respect to the VicRoads Code of Practice for Roadside Vegetation Removal Background Paper ('the Background Paper').

Any proposal for an increase in exemptions for native vegetation removal in Victoria is, in our view, of significant concern. This is particularly the case with respect to vegetation on roadsides which, especially in a heavily cleared State such as Victoria, will often represent a significant proportion or even the only surviving example of particular vegetation types. Even if it is not rare or restricted, roadside vegetation frequently plays important role as wildlife habitat and landscape connectivity. These functions are likely to become increasingly important with climate change.

Road safety and conservation are both issues of significant community interest and high public importance and conflicts between the two will frequently be difficult to reconcile. Our contact with environment groups, community organisations and concerned individuals suggests that there is a lack of confidence that the conservation values of roadside vegetation are adequately recognised by VicRoads or, if they are, that VicRoads decision making is sufficiently transparent and accountable. Our comments here are provided with the aim of ensuring that any change to the present system addresses these concerns.

While it is not a matter directly relevant to the Background paper, it is disappointing that the Roadside Conservation Advisory Committee, although apparently still formally constituted under section 12 of the *Conservation Forests and Lands Act 1958*, has not

actually operated for some time. While not a substitute for broad public consultation, the Roadside Conservation Advisory Committee or something similar would be an ideal forum for independent, technically informed consideration of proposals such as the present.

While we appreciate the opportunity to comment on the Background Paper, we are strongly of the view that doing so is not a substitute for reviewing and providing comment on a draft Code of Practice and detail about the proposed method of implementation.

Our submission addresses suggests some principles which we believe should inform any reform in the area of the management of roadside vegetation and identifies some key issues we believe need to be addressed, rather than answering the specific questions posed in the Background Paper.

The Code should require transparency and provide for accountability in decision making about roadside vegetation

1. To ensure transparency of decision making to the community, the Code should contain:
 - a. a comprehensive statement of the principles which will be applied by VicRoads in making decisions about roadside native vegetation; and
 - b. a credible and appropriate process for public consultation about and public involvement in decisions about roadside vegetation.
2. Some recommendations in terms of process include:
 - a. Providing written explanations containing the reasons for removal of the vegetation, what other options were considered, why these were not implemented, and what expertise assisted in this decision making process. This documentation should be made widely available to the public.
 - b. Appointing an institutional organisation that has the power to investigate and ask questions, to ensure VicRoads remains accountable.

A comprehensive code for roadside vegetation management, not just roadside vegetation removal

3. It appears that the proposed Code will be restricted to roadside vegetation removal. We consider that this is inadequate. While we understand that VicRoads

does have other policies and strategies that cover environmental responsibilities including roadside vegetation, we consider that it would be preferable for the proposed Code to be a comprehensive document that sets out VicRoads approach to the management of roadside vegetation generally.

4. In our view it is preferable for the Code to be a single comprehensive document, as opposed to a narrowly focused Code that cannot be understood without reference to a range of other documents which may or may not be readily publicly available or accessible to a reasonably intelligent member of the general public. The document should be clear and in simple language so it is accessible to the public and the community to ensure transparency and accountability.

The Code must ensure that decision making about roadside vegetation removal takes account of the conservation significance of the vegetation concerned

5. Consistent with the policy and methodology contained in the Native Vegetation Framework, the Code should recognise that vegetation will vary in conservation significance depending on the conservation status of the EVC, the condition of the vegetation, its site context and other factors, such as whether it forms habitat for a threatened species.
6. Section 8.4 of the Background Paper suggests that some limitation on vegetation clearing based on the identification of a critically endangered EVC as a possibility. This is far too narrow and in our view the Code must as a minimum include a requirement for a determination of conservation significance in accordance with the Native Vegetation Framework as an initial step before any consideration is given to roadside vegetation removal or other road safety treatments.
7. We recommend that the Code provide for a compulsory site-based assessment from a suitably qualified ecologist at the commencement of the process, in order to assess the type and value of the relevant roadside vegetation. This assessment should be the mandatory first step in the procedure, and the assessment should be made publicly available, both to ensure transparency and to encourage the contribution of local knowledge to the process.

The code should also recognise aesthetic, amenity and heritage values of roadside vegetation

8. The community values roadside vegetation not only for its conservation significance but also for other values such as aesthetic, amenity and heritage values. While acknowledged in the background paper, it is not clear if and how these values will be recognised in the proposed Code.

9. In some instances these values will be the subject of a separate legislative scheme (such as heritage listing, aboriginal cultural heritage protection or a permit requirement under a planning scheme overlay). However in many instances there is no formal requirement for these strongly held values to be accounted for in the decision making process.
10. In our view, it is critical that the Code recognise these values, require steps to identify them early in the planning process by the full consultation and the early provision of information and by providing clarity about how VicRoads will respond to these issues when they are raised.

The Code should require thorough consideration of alternatives to vegetation removal

11. A common complaint is that alternatives strategies or treatments other than vegetation removal are not considered, or, if they are, that the reasons for not adopting these alternatives are not thoroughly explained.
12. In our view it is important that the Code provide clear guidance, preferably to the alternatives available and the criteria to be used in evaluating them, and certainly at least to the processes that will be followed by VicRoads in conducting such an assessment.
13. A requirement to thoroughly and transparently consider alternatives is, in our submission, not only good public administration but also required to satisfy the priority given to avoiding native vegetation removal under the Native Vegetation Framework.

Regulatory implementation of the Code

14. The proposed method of regulatory implementation is a significant area of concern. While it seems that the proposal is for the Code to be the basis of an exemption under the present native vegetation controls in Clause 52.17 of the Victoria Planning Provisions, the detail of how the Code is to operate and fit within the current framework will be a very important determinant of whether the community can have confidence that roadside vegetation is managed appropriately.

Public participation – third party rights must be preserved

15. The present requirement for VicRoads to obtain a permit for roadside vegetation removal under clause 52.17 of planning schemes attracts the operation of important accountability mechanisms under the Planning and Environment Act 1987 such as the need to advertise, the right to object and to have permit applications scrutinised by the Victorian Civil and Administrative Tribunal.

16. While we would not wish to be heard to say that there is no room for improvement in this system, we consider that requirement to inform the community and the ability of the community to scrutinise and challenge vegetation clearing proposals is of fundamental importance. Any proposal to replace this system with new procedures under a Code must ensure that opportunities for public participation in decision making are at least the equivalent of those that apply presently.
17. Given the wide public interest in both issues of road safety and conservation of native vegetation, community involvement must be integrated into the process. Past experience demonstrates that if the community is involved at an early stage, a great deal of time and resources are saved in the long run.

Should the Code apply to all roads or just those managed by VicRoads?

18. While we can see some benefit in a single code covering all roadsides regardless of who has management responsibility under the Road Management Act, we consider that the application of the Code should be limited to roads within the jurisdiction of VicRoads. These more frequently used roads are where it can be expected that conflicts between road safety and road side vegetation conservation will arise most regularly. In addition, any attempt to develop a code that adequately addresses the vastly different levels of resources and expertise available to VicRoads compared to local government risks becoming too complicated.

Compliance with the Code

19. Community confidence in compliance with a Code is a fundamentally important issue that should be adequately addressed to ensure stakeholder confidence in, and credibility of, the Code and VicRoads' activities. The self policing option suggested in the Background paper is completely inadequate.

Dispute resolution process

20. It is very difficult to comment on the issue of dispute resolution without more information about what will be included in the proposed Code and how it will be implemented. As noted above, we consider that at a minimum the rights of third parties to be notified of and to scrutinise and challenge roadside vegetation removal proposals should be equivalent to the rights which apply now under the Planning and Environment Act.
21. The Background Paper refers in section 8.7 to resolving disputes in a speedy manner and at a local level if possible. It is queried how appropriate it is for disputes to be managed at this local level. There is a need to ensure that any

process is resolved by a body with the appropriate technical expertise and experience.

22. As mentioned, an emphasis on full and early consultation will result in a reduced burden on dispute resolution mechanisms. Due to the frequent safety versus conservation conflict involved in these matters, the Code must contain broad methods to manage this conflict, at all stages throughout the process.

We understand that VicRoads has committed to consultation on the draft Code once developed. We would welcome your confirmation that this will occur and request also that the draft Code be accompanied by a concise explanation of the proposed method of regulatory implementation.

Thank you for the opportunity to provide these comments.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'B Sydes', with a stylized flourish at the end.

Brendan Sydes

Principal Solicitor