42.01 ENVIRONMENTAL SIGNIFICANCE OVERLAY

31/07/2018
VC148

Shown on the planning scheme map as **ESO** with a number.

Purpose

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To identify areas where the development of land may be affected by environmental constraints.

To ensure that development is compatible with identified environmental values.

42.01-1 Environmental significance and objectives

31/07/2018
VC148

A schedule to this overlay must contain:

- A statement of environmental significance.
- The environmental objectives to be achieved.

42.01-2 Permit requirement

16/10/2025
VC288

A permit is required to:

- Construct a building or construct or carry out works. This does not apply if a schedule to this overlay specifically states that a permit is not required.
- Construct a fence if specified in a schedule to this overlay.
- Construct bicycle pathways and trails.
- Subdivide land. This does not apply if a schedule to this overlay specifically states that a permit is not required.
- Remove, destroy or lop any vegetation, including dead vegetation. This does not apply:
  - If a schedule to this overlay specifically states that a permit is not required.
  - If the table to Clause 42.01-3 specifically states that a permit is not required.
  - To the removal, destruction or lopping of native vegetation in accordance with a native vegetation precinct plan specified in the schedule to Clause 52.16.

VicSmart applications

Subject to Clause 71.06, an application under this clause for a development specified in Column 1 is a class of VicSmart application and must be assessed against the provision specified in Column 2.

Class of application	Provision
Subdivide land to realign the common boundary between two lots where: ▪ The area of either lot is reduced by less than 15 percent. ▪ The general direction of the common boundary does not change.	Clause 59.01
Subdivide land into lots each containing an existing building or car parking space where: ▪ The buildings or car parking spaces have been constructed in accordance with the provisions of this scheme or a permit issued under this scheme. ▪ An occupancy permit or a certificate of final inspection has been issued under the Building Regulations in relation to the buildings within five years prior to the application for a permit for subdivision.	Clause 59.02

Class of application	Provision
Subdivide land into two lots if: ■ The construction of a building or the construction or carrying out of works on the land: – Has been approved under this scheme or by a permit issued under this scheme and the permit has not expired. – Has started lawfully. ■ The subdivision does not create a vacant lot.	Clause 59.02
Subdivide land into two lots if: ■ A permit has been issued under a provision of a residential zone to construct up to two dwellings on the land and the permit has not expired. ■ Each lot will contain either: – one existing dwelling; or – one dwelling permitted to be constructed in accordance with the permit.	Clause 59.02
Construct a fence.	Clause 59.05
Remove, destroy or lop one tree provided: ■ A permit has not been granted for a VicSmart application to remove, destroy or lop a tree on the same land within the last 12 months. ■ There is no other current VicSmart application to remove, destroy or lop a tree on the same land.	Clause 59.06
Construct a building or construct or carry out works for: ■ A carport, garage, pergola, verandah, deck, shed or similar structure. ■ A rainwater tank. The buildings and works must be associated with a dwelling or a small second dwelling.	Clause 59.05

42.01-3
16/08/2024
VC262

Table of exemptions

The requirement to obtain a permit does not apply to:	
Emergency works	Vegetation that is to be removed, destroyed or lopped: ■ in an emergency by, or on behalf of, a public authority or municipal council to create an emergency access or to enable emergency works; or ■ where it presents an immediate risk of personal injury or damage to property. Only that part of the vegetation that presents the immediate risk may be removed, destroyed or lopped under this exemption.
Extractive industry	Vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the carrying out of extractive industry in accordance with a work plan approved under the *Mineral Resources (Sustainable Development) Act 1990* and authorised by a work authority granted under that Act.

The requirement to obtain a permit does not apply to:	
Fire protection	Vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the carrying out of any of the following fire protection activities: ▪ fire fighting; ▪ planned burning; ▪ making or maintenance of a fuelbreak or fire fighting access track (or any combination thereof) that does not exceed a combined width of 6 metres; ▪ making of a strategic fuelbreak up to 40 metres wide by, or on behalf of, a public authority in accordance with a strategic fuelbreak plan approved by the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*); ▪ is ground fuel within 30 metres of a building and is vegetation other than native vegetation; ▪ in accordance with a fire prevention notice issued under either: – section 87 of the *Fire Rescue Victoria Act 1958* ; – section 65 of the *Forests Act 1958* ; or – section 41 of the *Country Fire Authority Act 1958* . ▪ keeping vegetation clear of, or minimising 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* ; ▪ minimising the risk to life and property from bushfire on a roadside of a public road managed by the relevant responsible road authority, and carried out by, or on behalf of that authority 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*). In this exemption, roadside, public road and responsible road authority have the same meanings as in section 3 of the *Road Management Act 2004* . *Note: Additional permit exemptions for bushfire protection are provided at Clause 52.12.*
Geothermal energy exploration and extraction	Vegetation that is to be removed, destroyed or lopped to the minimum extent necessary in accordance with an operation plan approved under the *Geothermal Energy Resources Act 2005* .
Greenhouse gas sequestration and exploration	Vegetation that is to be removed, destroyed or lopped to the minimum extent necessary in accordance with an operation plan approved under the *Greenhouse Gas Geological Sequestration Act 2008* .
Land management or directions notice	Vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to comply with a land management notice or directions notice served under the *Catchment and Land Protection Act 1994* .
Land use conditions	Vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to comply with a land use condition served under the *Catchment and Land Protection Act 1994* .
Mineral exploration and mining	Vegetation that is to be removed, destroyed or lopped to the minimum extent necessary by the holder of an exploration, mining, prospecting, or retention licence issued under the *Mineral Resources (Sustainable Development) Act 1990* : ▪ that is low impact exploration within the meaning of Schedule 4A of the *Mineral Resources (Sustainable Development) Act 1990* ; or

The requirement to obtain a permit does not apply to:	
	▪ in accordance with a work plan approved under Part 3 of the *Mineral Resources (Sustainable Development) Act 1990* . *Note: Schedule 4A of the Mineral Resources (Sustainable Development) Act 1990 specifies limits on the extent of native vegetation that may be removed as part of low impact exploration.*
Noxious weeds	Vegetation that is a noxious weed subject of a declaration under section 58 or section 58A of the *Catchment and Land Protection Act 1994* . This exemption does not apply to Australian Dodder (*Cuscuta australis*).
Pest animal burrows	Vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the removal of pest animal burrows. In the case of native vegetation the written agreement of an officer of the department responsible for administering the *Flora and Fauna Guarantee Act 1988* is required before the vegetation can be removed, destroyed or lopped.
Planted vegetation	Vegetation that is to be removed, destroyed or lopped that was either planted or grown as a result of direct seeding for Crop raising or Grazing animal production.
Railways	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*).
Regrowth	Vegetation that is to be removed, destroyed or lopped that has naturally established or regenerated on land lawfully cleared of naturally established vegetation, and is: ▪ bracken (Pteridium esculentum); or ▪ within the boundary of a timber production plantation, as indicated on a Plantation Development Notice or other documented record, and has established after the plantation. This exemption does not apply to land on which vegetation has been destroyed or otherwise damaged as a result of flood, fire or other natural disaster.
Road safety	Vegetation that is to be removed, destroyed or lopped to the minimum extent necessary by or on behalf of a public authority or municipal council to maintain the safe and efficient function of an existing public 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*).
Stone exploration	Vegetation that is to be removed, destroyed or lopped to the minimum extent necessary to enable the carrying out of Stone exploration. The maximum extent of vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following: ▪ 1 hectare of vegetation which does not include a tree. ▪ 15 trees with a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level. ▪ 5 trees with a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level. This exemption does not apply to costeaning and bulk sampling activities.

The requirement to obtain a permit does not apply to:	
Surveying	Vegetation that is to be removed, destroyed or lopped to the minimum extent necessary by, or on behalf of, a licenced surveyor (within the meaning of section 3 of the *Surveying Act 2004*) using hand-held tools to establish a sightline for the measurement of land.
Traditional owners	Vegetation that is to be removed, destroyed or lopped by a person acting under, and in accordance with: ▪ a natural resources agreement under Part 6 of the *Traditional Owners Settlement Act 2010* ; or ▪ an authorisation order made under sections 82 or 84 of the *Traditional Owner Settlement Act 2010* as those sections were in force immediately before the commencement of section 24 of the *Traditional owners Settlement Amendment Act* in 2016 (1 May 2017).
Tram stops	Vegetation that is to be removed, destroyed or lopped to the minimum extent necessary by or on behalf of the Head, Transport for Victoria to construct a tram stop, including a tram stop shelter.
Transport land	Vegetation that is to be removed, destroyed or lopped to the minimum extent necessary by or on behalf of the Head, Transport for Victoria on land in a Transport Zone, or in a Public Acquisition Overlay if the Head, Transport for Victoria is the acquiring authority, to construct or maintain transport system infrastructure.

42.01-4 Application requirements

31/07/2018
VC148

An application must be accompanied by any information specified in a schedule to this overlay.

42.01-5 Decision guidelines

31/07/2018
VC148

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The Municipal Planning Strategy and Planning Policy Framework.
- The statement of environmental significance and the environmental objective contained in a schedule to this overlay.
- The need to remove, destroy or lop vegetation to create a defendable space to reduce the risk of bushfire to life and property.
- Any other matters specified in a schedule to this overlay.