

A Guide to the Regulations under the *Native Vegetation Act 1991*



Native Vegetation Council



**Government
of South Australia**

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Purpose of these guidelines

The *Native Vegetation Regulations 2003*, among other things set out circumstances in which native vegetation may be cleared without the need for specific consent from the Native Vegetation Council. In dealing with the clearance of native vegetation the regulations provide a mechanism to assist in the day to day management of a property.

This information sheet has been prepared to provide **guidance only** with respect to clearance actions and processes authorised by the Native Vegetation Regulations and are **not** meant to provide a legal interpretation of the Regulations.

In some cases, even though clearance may be exempt by the Native Vegetation Regulations, there may be constraints under other legislation which need to be complied with, such as the *River Murray Act 2003*, *Water Resources Act 1997*, *Natural Resources Management Act 2004*, *Development Act 1993*, *Adelaide Dolphin Sanctuary Act 2005* and the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

Format of Information Sheet: In the description of each regulation listed in this information sheet the first column indicates the reference number of each regulation as it appears in the legislation together with a brief summary title. The second column indicates the actual wording of the regulation taken directly from the legislation, while the third provides general comment to assist in the interpretation of that regulation.

Note – The Native Vegetation Regulations has extended the definition of native vegetation to include the protection of dead trees where they provide, or have the potential to provide habitat for animals of a listed threatened species under the Commonwealth’s *Environment Protection and Biodiversity Conservation Act 1999* (see page 1 for more details).

Note – Clearance enabled by the regulations do not apply to Heritage Agreements *except where explicitly stated* (see Regulation 4 of the Act).

Further information about the regulations can be obtained from the Native Vegetation Council Secretariat at the following address or via the following web site:

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Street Address

Gate 3, Waite Road
Hannaford Building
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Web Address

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Definitions

In reading this document, unless the contrary intention appears, the following definitions from the *Native Vegetation Act 1991* and *Native Vegetation Regulations 2003* apply—

“**Act**” means the *Native Vegetation Act 1991*;

“**business day**” means any day except Saturday, Sunday or a public holiday;

“**Building Code**” has the same meaning as in the *Development Act 1993*;

“**bushfire prevention plan**” means a plan for bushfire prevention prepared by a district bushfire prevention committee under the *Fire and Emergency Services Act 2005*, as in force from time to time;

“**clearance**”, in relation to native vegetation, means—

- (a) the killing or destruction of native vegetation;
- (b) the removal of native vegetation;
- (c) the severing of branches, limbs, stems or trunks of native vegetation;
- (d) the burning of native vegetation;
- (e) any other substantial damage to native vegetation, and includes the draining or flooding of land, or any other act or activity, that causes the killing or destruction of native vegetation, the severing of branches, limbs, stems or trunks of native vegetation or any other substantial damage to native vegetation;

“**country**” has the same meaning as in the *Fire and Emergency Services Act 2005*;

“**dead plants**” under the definition of *native vegetation* in section 3(1) of the Act, the class of plants, or parts of plants, comprising trees of a species indigenous to South Australia—

- (a) that have a trunk circumference (measured at a point 300 millimetres above the base of the tree) of —
 - (i) in the case of a tree located on Kangaroo Island — 1 metre or more; or
 - (ii) in any other case—2 metres or more; and
- (b) that provide or have the potential to provide, or are a part of a group of trees or other plants (whether alive or dead) that provide, or have the potential to provide, a habitat for animals of a listed threatened species under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, is declared to be included in that definition.

“**Development Plan**” means a Development Plan under the *Development Act 1993*;

“**dwelling**” means a building or part of a building used as a self-contained residence;

“**fence**” means a fence consisting of posts and wire fixed permanently to land and designed for the purpose of controlling access by people or the movement of animals;

“**fire-control purposes**”—these are purposes associated with preventing or controlling the spread of fires or potential fires;

“**fire access track**” means a track (not exceeding 15 metres in width) constructed for use by vehicles undertaking firefighting activities.

“**firefighting**” as in the *Fire and Emergency Services Act 2005*, means any activity directed towards—

- (a) preventing, controlling or extinguishing fires;
- (b) dealing with other emergencies that require SAMFS or SACFS to act to protect life, property or the environment.

“**intact stratum**” is defined by section 3A of the *Native Vegetation Act 1991* as an area that, in the opinion of the Native Vegetation Council, has not been seriously degraded by human activity (but not degradation that has been caused by fire) during the immediately preceding period of 20 years. A ‘stratum’ of native vegetation means a layer of a plant community consisting of plants that comprise native vegetation that have a similar growth habit. An area may be considered to have an intact stratum, even if another stratum is degraded.

“**infrastructure**” means—

- (a) the infrastructure, equipment, structures, works and other facilities used in or in connection with the supply of water or electricity, gas or other forms of energy, the provision of telecommunications, or the drainage, removal or treatment of waste water or sewage; or
- (b) roads and their supporting structures or works; or
- (c) ports, wharfs, jetties, railways, trams and busways;

In addition the Native Vegetation Regulations have extended the definition of *Infrastructure* under Regulation 5(1)(d) to include:

- (a) flood mitigation works;
- (b) an airstrip; and
- (c) a shipping channel.

“**Mining Act**” means the *Mining Act 1971*, the *Opal Mining Act 1995*, the *Petroleum Act 2000*, the *Offshore Minerals Act 2000* or the *Roxby Downs (Indenture Ratification) Act 1982*;

“**native vegetation**” means a plant or plants of a species indigenous to South Australia including a plant or plants growing in or under waters of the sea but does not include—

- (a) a plant or part of a plant that is dead unless the plant, or part of the plant, is of a class declared by regulation to be included in this definition; or
- (b) a plant intentionally sown or planted by a person unless the person was acting—
 - (i) in compliance with a condition imposed by the Council under this Act or by the Native Vegetation Authority under the repealed Act, or with the order of a court under this Act or the repealed Act; or
 - (ii) in pursuance of a proposal approved by the Council under Part 4 Division 2; or
 - (iii) in compliance with a condition imposed by a Minister, statutory authority or prescribed person or body under—
 - (A) the *River Murray Act 2003*; or
 - (B) the *Water Resources Act 1997*; or
 - (C) any other Act prescribed by the regulations for the purposes of this paragraph;

“**prescribed building**” means—

- (a) a building within the meaning of the *Development Act 1993* (other than a Class 7A or 10B building under the *Building Code*) that is permanently fixed to land; and
- (b) a building of a kind contemplated by paragraph (a) that is in the course of construction if the foundations, a concrete slab or other footings have been completed; and
- (c) any other building or structure of a class declared by the Minister by notice in the Gazette to be included in the ambit of this definition, but does not include any building or structure declared by the Minister by notice in the Gazette to be excluded from the ambit of this definition.

“**prescribed structure**” means—

- (a) a structure that is permanently fixed to land and used for, or in relation to, 1 or more of the following purposes:
 - (i) primary production;
 - (ii) the housing or feeding of animals;
 - (iii) the storage of fodder;
 - (iv) the storage of vehicles or vessels;
 - (v) any other purpose declared by the Minister by notice in the Gazette to be included within the ambit of this paragraph; and
- (b) any other structure of a class declared by the Minister by notice in the Gazette to be included within the ambit of this definition, but does not include—
- (c) a prescribed building; and
- (d) any structure of a class declared by the Minister by notice in the Gazette to be excluded from the ambit of this definition.

“**private mine**” means land declared under the *Mining Act 1971* to be a private mine;

“**River Murray Floodplain Area**” means the River Murray Protection Area so designated under regulation 4 of the *River Murray Regulations 2003*;

“**SACFS**” means the South Australian Country Fire Service;

“**road reserve**” under Regulation 5 (1)(y) is defined as the whole area of land surveyed and defined as public land for the purpose of establishing a road. It includes the made road itself and the strip of land on either side of the made road extending to the boundary of the adjoining land. With few exceptions, this is the responsibility of the relevant local government administration.

“**rural council**” has the same meaning as in the *Fire and Emergency Services Act 2005*.

Regulation

5(1)(a)

Dwellings & Associated Structures

[See also:

- **Restrictions on Clearance of Vegetation in Regulation 6(2) - page 38**
- **Restriction on clearance of native vegetation Regulation 6(3) - page 38]**

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if it is proposed to erect a building that is a dwelling or a structure or other facility that is ancillary to a dwelling and—

- (i) any development authorisation for the erection of the dwelling or structure or other facility required by or under the *Development Act 1993* has been obtained; and
- (ii) either—
 - (A) the vegetation—
 - does not comprise or form part of a stratum of native vegetation that is substantially intact; and
 - except where the dwelling is within a residential or township zone under the relevant Development Plan, does not include vegetation of the genus *Eucalyptus* with a stem diameter at 300 millimetres above the ground of 200 millimetres or more, or other vegetation with a stem diameter at the lowest point of the stem above ground level of 100 millimetres or more; or
 - (B) the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) that, after taking into account the need to preserve biological diversity and taking into account the needs of the owner of the land, the proposed site for the building is the most suitable that is available; and
 - the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) that there is no other practicable alternative that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared; and
 - the clearance is undertaken in accordance with a management plan that, after taking into account the full extent of clearance that is to be undertaken on the relevant land, has been approved by the Council and that results in a significant environmental benefit on the property where the building is to be situated, or the owner of the land (or a person acting on his or her behalf) has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) of the Act.

This regulation covers the clearance of native vegetation for the establishment of a **dwelling**, or **structure associated with a dwelling** (such as an adjoining garage). **Both** development approval and Native Vegetation Council approval is required as described below.

The aim of the regulation is to allow for the establishment of an approved dwelling (where relevant authorisation has been obtained as required by the *Development Act 1993*), in such a location as to avoid or to minimise the impact on significant native vegetation. Accordingly, a landowner might not obtain approval to clear areas of significant native vegetation if a suitable, already cleared site is available on the property. If no such site exists, the landowner should look for an area containing the least significant native vegetation, and results in the least amount of clearance. The suitability of the site may also take into account, if applicable, bushfire and watershed protection needs.

The approval of the Native Vegetation Council is required for the clearance of native vegetation comprising part of an intact stratum of native vegetation (see definition below) in all areas of the State covered by the Act (regardless of zone). Unless the proposed dwelling is located within a residential or township zone, the approval of the Native Vegetation Council is also required for clearance of native trees.

Approval of vegetation clearance (as for other developments and clearing on farmland) will be conditional on the achievement of a significant environmental benefit elsewhere on the property to compensate for the vegetation to be cleared. A management plan must be prepared that describes the works that will result in the environmental benefit, which may include providing on the property for the management of other native vegetation, the restoration of native vegetation, or the replanting of a cleared area. If this is not achievable on the property, the applicant may apply (to the Native Vegetation Council) to make a payment that will be used by the Native Vegetation Council to achieve an environmental benefit elsewhere in the region.

Regulation

5(1)(ab)

**Residential
Sub-division**

[See:
Restrictions on
Clearance of
Vegetation in
Regulation 6(2) -
page 38]

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if it is proposed to divide land for use for residential purposes (after taking into account the construction of roads and other infrastructure) and—

- (i) any development authorisation for the division of the land and for the use of land for residential purposes under the *Development Act 1993* has been obtained; and
 - (ii) —
- (A) the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) that, after taking into account the need to preserve biological diversity and taking into account the needs of the owner of the land, the clearance will be limited to clearance reasonably required to erect 1 dwelling, and any structure or other facility that would be reasonably expected to be ancillary to the dwelling, on each allotment to be created by the division; and
 - (B) the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) that there is no other practicable alternative that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared; and
 - (C) the clearance is undertaken in accordance with a management plan that has been approved by the Council and, after taking into account the full nature and extent of clearance that is to be undertaken on the relevant land and any commitments that have been made with respect to the establishment, restoration or maintenance of native vegetation, the Council is satisfied that there will be a significant environmental benefit on the land being divided or within the same region of the State, or the owner of the land (or a person acting on his or her behalf) has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund or, if the Council is satisfied that it is appropriate in the circumstances, agreed to make a payment into the Fund, of an amount considered by the Council to be sufficient to achieve a significant environmental benefit which outweighs the value of retaining the vegetation;

This regulation provides certainty that once sub-division approval has been granted native vegetation may be cleared for a house site and associated structures at the land division stage. Another regulation, 5(1)(a), provides for clearance on an allotment-by-allotment basis. The Native Vegetation Council might not restrict the reasonable clearance for a house site, but will negotiate with the developer to ensure that the loss of significant native vegetation is avoided or minimised. Approval of vegetation clearance will be conditional by achieving a significant environmental benefit offset.

The regulation establishes an approval process for the clearance of house site envelopes once sub-division approval has been granted. The envelopes must be located so as to avoid or to minimise the impact on native vegetation as far as practicably possible. To assist in preparing an appropriate submission, developers are encouraged to discuss the development with the Native Vegetation Council at an early stage to assist in minimising the potential impacts on significant native vegetation, reducing the size of the SEB requirement and may also identify potential significant environmental benefit options. A separate information sheet on this regulation is available from the website:

<http://www.dwlbc.sa.gov.au/native/index.html>

A separate exemption [5(1)(d)] deals with clearance for infrastructure or services such as roads, power transmission, water, and / or telecommunications. Similarly, the NVC will not restrict reasonable clearance for infrastructure; however, the location of the works must minimise the impact on areas of native vegetation.

A management plan must be prepared that describes the works that will result in the environmental benefit, which may include the management of other native vegetation, the restoration of a degraded native vegetation remnant, or the replanting of a cleared area. Alternatively the applicant may make a payment that will be used by the Native Vegetation Council to achieve an environmental benefit elsewhere in the region. The information that the Native Vegetation Council requires to make its decision must be supplied by the proponent. The information provided should be sufficient to address both this exemption [5(1)(ab)], and that relating to infrastructure [5(1)(d)] and must be of a sufficient standard for the NVC to make an informed decision; this is likely to require engaging a consultant to assist with preparing detailed native vegetation information.

Regulation

5(1)(b)

Prescribed buildings & structures other than Dwellings

[See Restrictions on Clearance of Vegetation in Regulation 6(2) – see page 38]

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared –

if it is proposed to erect a building or a structure or other facility that is ancillary to a building, other than a dwelling or a structure or other facility that is ancillary to a dwelling, and—

- (i) any development authorisation for the erection of the building or structure or other facility required by or under the *Development Act 1993* has been obtained; and
- (ii) the vegetation—
 - (A) does not comprise or form part of a stratum of native vegetation that is substantially intact; and
 - (B) except where the building is within a tourist accommodation, business, centre, commerce, commercial, industrial, industry or office zone under the Relevant Development Plan, does not include vegetation of the genus *Eucalyptus* with a stem diameter at 300 millimetres above the ground of 200 millimetres or more, or other vegetation with a stem diameter at the lowest point of the stem above ground level of 100 millimetres or more.

Definition of intact stratum

A substantially intact stratum of native vegetation is defined by sn 3A of the *Native Vegetation Act 1991* as an area that, in the opinion of the Native Vegetation Council, has not been seriously degraded by human activity (but not degradation that has been caused by fire) during the immediately preceding period of 20 years.

A 'stratum' of native vegetation means a layer of a plant community consisting of plants that comprise native vegetation that have a similar growth habit. An area may be considered to have an intact stratum, even if another stratum is degraded.

This regulation permits the clearance of native vegetation for the **establishment of a prescribed building or structure**, other than a dwelling [regulation 5(1)(a)], or a proposed development subject to Section 48 of the *Development Act 1993* [regulation 5(1)(c)].

The approval of the relevant planning authority (subject to the *Development Act 1993*) is required prior to clearance occurring.

The aim of the regulation is to ensure that the prescribed building or structure is located so as to avoid or minimise the impact on areas of significant native vegetation.

This regulation does not permit the clearance of vegetation considered to form part of a substantially intact stratum.

The Native Vegetation Council may not (subject to Section 27(2) of the *Native Vegetation Act 1991*) approve the clearance of part of an intact stratum of native vegetation (definition below), in all areas of the state covered by the Act (regardless of zone).

Unless the proposed prescribed building is located within a tourist accommodation, business centre, commerce, commercial, industrial, industry or office zone, the approval of the Native Vegetation Council is also required for clearance of larger native trees (see size range in the regulation).

Note: Where clearance of intact vegetation is proposed and where no other options are available that will avoid vegetation clearance, regulation 5(1)(da) **may** provide an alternative for consideration by the NVC.

Regulation

5(1)(c)

**Development
subject to
Section 48 –
Development
Act 1993**

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the clearance is incidental to a proposed development to which section 48 of the *Development Act 1993* applies; and
- (ii) an environmental impact statement, public environmental report or development report, and an Assessment Report, relating to the development have been prepared under that Act; and
- (iii) the Minister responsible for the administration of the *Development Act 1993* referred the environmental impact statement, public environmental report or development report to the Native Vegetation Council for comment and report and—
 - (A) the Council provided comments which were included (wholly or substantially) in the relevant Assessment Report; or
 - (B) the Council failed to provide comments within 8 weeks after receiving the Minister’s invitation for comment and report; and
- (iv) the Governor has granted his or her consent to the proposed development under section 48 of the *Development Act 1993*; and
- (v) the clearance is undertaken in accordance with that consent; and
- (vi) the clearance is undertaken in accordance with a management plan that has been approved by the Council that results in a significant environmental benefit on the property where the development is being undertaken, or the owner of the land (or a person acting on his or her behalf) has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) of the Act.

This regulation applies where a proposed **development is considered to be of such social, economic or environmental importance** that an environmental impact statement, public environment report or development report is declared by the relevant Minister to be necessary under the *Development Act 1993*.

Where this is the case, Native Vegetation Council approval is not required for the clearance of any native vegetation. Instead, the Council is provided the opportunity to make comment on the proposed development, which is then taken into account by the Minister administering the *Development Act*.

However, where such a development has been approved and it involves the clearance of native vegetation, a significant environmental benefit must be achieved to compensate for the vegetation to be cleared. A significant environmental benefit may include providing, on the property, for the management or restoration of other native vegetation, or the replanting of a cleared area. If this is not achievable on the property, the applicant may apply (to the Native Vegetation Council) to make a payment that will be used by the Native Vegetation Council to achieve an environmental benefit elsewhere in the region.

Regulation

5(1)(d)

Building or provision of infrastructure, including infrastructure in the Public Interest

[see expanded definition of infrastructure in Definitions – page 1]

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared if—

- (i) —
 - (A) the clearance is incidental to the construction or expansion of a building or infrastructure and the Minister has, by instrument in writing, declared that he or she is satisfied that the clearance is in the public interest; or
 - (B) the clearance is required in connection with the provision of infrastructure or services to a building or proposed building, or to any place; and
- (ii) any development authorisation required by or under the *Development Act 1993* has been obtained; and
- (iii) the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) that, after taking into account the need to preserve biological diversity and the nature and purposes of any proposed building or infrastructure that is yet to be constructed, the proposed site of the building or infrastructure is the most suitable that is available; and
- (iv) the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) that, there is no other practicable alternative that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared; and

Note: Regulation continued on next page

This regulation permits clearance of vegetation for the construction or expansion of a **building or infrastructure** that the Minister for Environment & Conservation considers to be **in the public interest** or provision of infrastructure or services to an existing or approved building or site that may not be located in native vegetation. Relevant authorisation must **also** be obtained as required by the *Development Act 1993*.

The aim of the regulation is to allow for the establishment of a building or infrastructure (considered to be in the public interest), or for the provision of infrastructure or services to an existing or proposed building or to any other place, provided that it is located such that it avoids or minimises the impact on significant areas of native vegetation.

A submission to the Native Vegetation Council will need to establish that:

- the building or structure cannot be established without the need to clear some vegetation, **and**
- the site chosen contains the least significant native vegetation, provided that construction is practicable on that site.

In particular, a proponent should seek to avoid areas containing an intact stratum of native vegetation (see definition this page).

Approval for vegetation clearance for such developments is conditional on the achievement of a significant environmental benefit elsewhere on the property or region to compensate for the vegetation to be cleared.

A management plan must be prepared that describes the works that will result in the environmental benefit, which may include providing for the management of other native vegetation, the restoration of native vegetation, or the replanting of a cleared area. If this is not achievable on the property, the applicant may apply (to the Native Vegetation Council) to make a payment into the Native Vegetation Fund that will be used by the Native Vegetation Council to achieve an environmental benefit elsewhere in the region.

Regulation

5(1)(d)

Continued.

Building or provision of infrastructure including infrastructure in the Public Interest

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

- (v) the clearance is undertaken in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision or a management plan that has been approved by the Council, and either—
- (A) there will be a significant environmental benefit on the property where the clearance is being undertaken or within the same region of the State; or
- (B) either—
- the owner of the land (or a person acting on his or her behalf); or
 - a person connected with the construction or expansion of the building or infrastructure, or the provision of the infrastructure or services (as the case requires),
- has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) of the Act.

Regulation

5(1)(da)

Minor clearance associated with approved developments

[see additional provisions associated with Regulation 5(1b) – page 35]

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the clearance is incidental to proposed development to be undertaken on land; and
- (ii) any development authorisation required by or under the *Development Act 1993* has been obtained; and
- (iii) the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) –
 - (A) that the vegetation is not significant (including by taking into account the scale or nature of surrounding vegetation and relevant guidelines prepared and published by the Council); and
 - (B) that there is no practicable alternative that would involve no clearance or the clearance of less vegetation; and
- (iv) the clearance is undertaken in accordance with a management plan that has been approved by the Council that results in a significant environmental benefit on the property where the development is being undertaken, or the owner of the land (or a person acting on his or her behalf) has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) of the Act.

This regulation requires both Native Vegetation Council and development approval for minor clearance of native vegetation. The necessary development approval (*Development Act 1993*) must be obtained prior to clearance occurring.

The Native Vegetation Council needs to resolve that the vegetation to be cleared is not significant, and as the extent of the proposed clearance is minor having taken into account the surrounding areas of native vegetation and clearance is consistent with Native Vegetation Council approved guidelines.

Any proposal must seek to minimise the clearance of native vegetation.

Approval for vegetation clearance for such developments is conditional on the achievement of a significant environmental benefit elsewhere on the property or region. A management plan must be prepared that describes the works that will result in the environmental benefit. If this is not achievable on the property, the applicant may apply (to the Native Vegetation Council) to make a payment into the Native Vegetation Fund that will be used by the Native Vegetation Council to achieve an environmental benefit elsewhere in the region.

Regulation

5(1)(e)

Repair or maintenance works of the Crown

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the clearance is incidental to the repair or maintenance work of the Crown; and
- (ii) the person undertaking the clearance—
 - (A) has given at least 10 business days notice in writing outlining the proposed clearance to a person who has the care, control or management of the land before commencing the clearance (unless the land is under the care, control or management of the Crown); or
 - (B) is acting in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision; or
 - (C) is acting in a situation of urgency that requires action without delay; and
- (iii) the person undertaking the clearance complies with any guidelines relating to the protection of native vegetation from the spread of plant diseases or noxious weeds, or from unnecessary damage during the performance of any work, prepared by the Council in accordance with section 25 of the Act,

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement)

This regulation permits clearance of vegetation associated with the **repair or maintenance of works** of the Crown.

A condition of the regulation requires the landholder (if not the Crown) to be notified of the proposed works, unless the proponent is following standard operating procedures agreed to by the Native Vegetation Council.

The person undertaking the clearance must also follow any guidelines issued by the Native Vegetation Council in relation to protecting native vegetation from the spread of plant pathogens or noxious weeds, or from causing unnecessary damage during the maintenance work.

Notification to the owner is required on the basis that the landholder is likely to be aware of the latest information regarding plant pathogens or noxious weeds on the property.

The notification is **not** required in emergency situations.

Regulation

5(1)(f)

Maintenance works associated with electricity supply

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) —
 - (A) the clearance is being undertaken as part of the duty of an electricity entity under Part 5 of the *Electricity Act 1996*; or
 - (B) the clearance is incidental to any repair or maintenance work of an electricity entity within the meaning of the *Electricity Act 1996*; and
- (ii) the person undertaking the clearance—
 - (A) is acting in accordance with the principles of vegetation clearance under the *Electricity Act 1996*; or

***Note Regulation continued on next page**

This regulation permits clearance of vegetation associated with the repair or maintenance of works associated with electricity supply by an electricity entity within the meaning of the *Electricity Act 1996*.

A condition of the regulation requires the landholder to be notified of the proposed works, unless the proponent is following standard operating procedures agreed to by the Native Vegetation Council, or in accordance with the principles of vegetation clearance under the *Electricity Act 1996*.

The person undertaking the clearance must also follow any guidelines issued by the Native Vegetation Council in relation to protecting native vegetation from the spread of plant pathogens or noxious weeds, or from causing unnecessary damage during the maintenance work.

Regulation

5(1)(f)
Continued

Maintenance works associated with electricity supply

has given at least 10 business days notice in writing outlining the proposed clearance to a person who has the care, control or management of the land before commencing the clearance (unless the land is under the care, control or management of the electricity entity); or

(C) is acting in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision; or

(D) is acting in a situation of urgency that requires action without delay; and

(iii) the person undertaking the clearance complies with any guidelines relating to the protection of native vegetation from the spread of plant diseases or noxious weeds, or from unnecessary damage during the performance of any work, prepared by the Council in accordance with section 25 of the Act.

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement).

Regulation

5(1)(g)

Repair or Maintenance of Infrastructure

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

(i) the clearance is incidental to the repair or maintenance of any infrastructure; and

(ii) the person undertaking the clearance—

(A) has given at least 10 business days notice in writing outlining the proposed clearance to a person who has the care, control or management of the land before commencing the clearance (unless the land is under the care, control or management of the person who is responsible for the infrastructure); or

(B) in acting in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision; or

(C) is acting in a situation of urgency that requires action without delay; and

(iii) the person undertaking the clearance complies with any guidelines relating to the protection of native vegetation from the spread of plant diseases or noxious weeds, or from unnecessary damage during the performance of any work, prepared by the Council in accordance with section 25 of the Act,

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement).

Notification to the owner is required on the basis that the landholder is likely to be aware of the latest information regarding plant pathogens or noxious weeds on the property.

The notification is not required in emergency situations, such as the need to restore power following an outage.

This regulation permits clearance of vegetation associated with the **repair or maintenance of infrastructure** not covered by regulations 5(1)(e) and 5(1)(f).

A condition of the regulation requires the landholder to be notified of the proposed works, unless the proponent is following standard operating procedures agreed to by the Native Vegetation Council.

The person undertaking the clearance must also follow any guidelines issued by the Native Vegetation Council in relation to protecting native vegetation from the spread of plant pathogens or noxious weeds, or from causing unnecessary damage during the maintenance work.

Notification to the owner is required on the basis that the landholder is likely to be aware of the latest information regarding plant pathogens or noxious weeds on the property.

The notification is not required in emergency situations, such as the need to restore power following an outage.

Regulation

5(1)(h)

Works on behalf of the Commissioner of Highways

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared - if—

- (i) The clearance is incidental to work being undertaken by or on behalf of the Commissioner of Highways; and
- (ii) except where the clearance is incidental to repair or maintenance work, there is no other practicable alternative that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared; and
- (iii) either—
 - (A) the clearance is undertaken in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision or a management plan that has been approved by the Council, and either there will be a significant environmental benefit at the site of the relevant work or within the same region of the State, or the Commissioner of Highways or another person undertaking the work has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) of the Act; or
 - (B) the clearance is incidental to repair or maintenance work and the person undertaking the clearance—
 - has given at least 10 business days notice in writing outlining the proposed clearance to a person who has the care, control or management of the land before commencing the clearance (unless the land is under the care, control or management of the Commissioner of Highways); or
 - is acting in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision; or
 - is acting in a situation of urgency that requires action without delay; and
- (iv) the person undertaking the clearance complies with any guidelines relating to the protection of native vegetation from the spread of plant diseases or noxious weeds, or from unnecessary damage during the performance of any work, prepared by the Council in accordance with section 25 of the Act.

This regulation applies to vegetation clearance undertaken by or on behalf of the **Commissioner of Highways**, including new and maintenance works.

The aim of the regulation is to ensure that works are undertaken in such a location and in such a manner so as to avoid or minimise the impact on significant native vegetation.

Approval for vegetation clearance for such developments is conditional on the achievement of a significant environmental benefit elsewhere on the site of the work or within the region, to compensate for the vegetation to be cleared. Alternatively, the proponent may apply (to the Native Vegetation Council) to make a payment into the Native Vegetation Fund that will be used by the Native Vegetation Council to achieve an environmental benefit elsewhere in the region.

Where work is being undertaken on land not under the care and control of the Commissioner of Highways a condition of the regulation requires the landholder, (if not the Crown) to be notified of the proposed works. That provision applies unless the proponent is following standard operating procedures agreed to by the Native Vegetation Council.

The person undertaking the clearance must also follow any guidelines issued by the Native Vegetation Council in relation to protecting native vegetation from the spread of plant pathogens or noxious weeds, or from causing unnecessary damage during the maintenance work.

Notification to the owner is required on the basis that the landholder is likely to be aware of the latest information regarding plant pathogens or noxious weeds on the property.

The notification is not required in emergency situations.

Regulation

**5(1)(i)
Maintenance
of existing
dams**

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if the clearance is incidental to the repair or maintenance of an existing dam

This regulation permits the clearance of native vegetation to **maintain** the structure and integrity, but **not** for the expansion of an **existing dam**.

Regulation

5(1)(j)

New dams

[See Restrictions on Clearance of Vegetation in Regulation 6(2) – see page 38]

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the clearance is incidental to the lawful construction of a new dam that will cover-
 - (A) in areas designated by the Council, by notice in the gazette, for the purpose of this provision – less than 500 square metres in surface when full;
 - (B) in other areas of the State – less than 200 square metres in surface area when full; and
- (ii) the vegetation to be cleared comprises trees with a stem diameter at the lowest point on the stem above ground level of 150 millimetres or more; and
- (iii) the land on which the vegetation is situated has been cleared of all other native vegetation and has been maintained during the immediately preceding 5 years for cultivation or pasture; and
- (iv) the vegetation is not of a class specified in Schedule 1; and
- (v) in the case of a dam within the ambit of subparagraph (i)(A) that will cover 200 square metres or more in surface area when full – the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) that, after taking into account need to preserve biological diversity and taking into account the needs of the owner of the land, the site of the dam is the most suitable that is available.

(Schedule 1 – River Red Gum, *Eucalyptus camaldulensis*)

This regulation applies to dams lawfully constructed within designated areas of the state as determined by the Native Vegetation Council, with a surface area of less than 500m² when full. A dam greater in size than 500m² in the designated area requires NVC approval for native vegetation clearance.

In areas outside those designated by the NVC a 200m² surface area when full applies. A dam greater in size than 200m² outside the designated area requires NVC approval for native vegetation clearance.

Regardless of the size of the dam the land where the dam is to be constructed must have been cleared and maintained for cultivation or pasture for the previous five years. The vegetation to be cleared must consist of only native trees with a stem diameter at the lowest point above ground level of 150mm or more.

This regulation does not apply to the clearance of River Red Gums.

All parts of this regulation (i) to (v) must apply. Where the requirements of some sections cannot be met a formal clearance application and consent of the Native Vegetation Council is required.

The aim of the regulation is to ensure that a new dam does not result in the clearance of an intact stratum of native vegetation. Note that clearance includes the loss of native vegetation as a result of flooding that may result for a new dam being constructed and filled.

A similar provision applies for clearance associated with the lawful construction of a dam on land held under pastoral lease (See Regulation 5(1)(ja)).

Regulation

5(1)(ja)

Dams on
pastoral land

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the clearance is incidental to the lawful construction or expansion of a dam on pastoral land (as defined in section 3(1) of the Act); and
- (ii) the vegetation is not of a class specified in Schedule 1; and
- (iii) the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) that, after taking into account the need to preserve biological diversity and taking into account the needs of the owner of the land, the site of the dam is the most suitable that is available; and
- (iv) the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) that, there is no other practicable alternative that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared; and
- (v) the clearance is undertaken in accordance with a standard operating procedure determined or approved by the Council for the purposes of this provision or a management plan that has been approved by the Council, and either there will be a significant environmental benefit on the property where the clearance is being undertaken or within the same region of the State, or the owner of the land (or a person acting on his or her behalf) has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) of the Act.

(Schedule 1 – River Red Gum, *Eucalyptus camaldulensis*)

This regulation permits the clearance of native vegetation for the lawful construction of a dam on land held as pastoral lease under the *Pastoral Land Management and Conservation Act 1989*.

Before any clearance occurs the NVC must be satisfied there is no alternative site that requires no clearance or clearance of less significant vegetation whilst taking in the need to preserve biological diversity as well as the needs of the landowner.

The landowner is required to act in accordance with standard operating procedures approved by the NVC or a management plan they have developed and it has been endorsed by the NVC.

Any clearance requires a Significant Environmental Benefit to be achieved either on the property, within the same region of the state or by a payment into the Native Vegetation Fund.

All parts (1) to (iv) must apply.

This regulation does not apply to the clearance of River Red Gums.

Regulation

5(1)(k)

**Clearance
around
prescribed
building or
structure**

[See also
Regulation 5A –
page 32 and
Restrictions on
Clearance of
Vegetation in
Regulation 6(1) –
page 38]

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared –

if—

the vegetation is growing or situated—

- (i) not more than 20 metres from a prescribed building; or
- (ii) not more than 5 metres from a prescribed structure;

Note—

The clearance of native vegetation under this paragraph is limited by regulation 6(1).

This regulation allows for the clearance of all native vegetation within **20** metres of a prescribed building or **5** metres of a prescribed structure.

SA CFS can provide advice on the retention of trees within the 5 and 20 metre zones around prescribed buildings or structures, where in the event of a bushfire the retention of those trees may assist in the deflection of radiant heat and embers over that building or other structure.

Prescribed buildings include houses and buildings within the meaning of the *Development Act 1993* that are permanently fixed to the land and extend to a building that is in the course of construction if the foundations, concrete slab or other footings have been completed.

Prescribed buildings do **not** include non habitable structures such as fences, swimming pools, retaining walls, masts and antennas or carparks.

Prescribed structures include constructions used for primary production, the housing or feeding of animals, the storage of fodder, and the storage of vehicles or vessels.

Note: If vegetation within 20 metres of a dwelling is located on land owned by a neighbour, written permission from the owner of that land is necessary before clearance occurs.

Regulation

5(1)(I)

Clearance for avoiding the risk of damage to property and personal injury

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) a plant comprising native vegetation exceeds 2 metres in height; and
- (ii) there is a danger that the plant will fall over or a limb or some other part of the plant will fall from it because of disease, wind damage or any other cause; and
- (iii) there is a real risk of personal injury or damage to property if that occurs; and
- (iv) it is not reasonably practicable to avoid the risk by avoiding the vicinity in which the plant is growing or is situated; and
- (v) the state of the plant has been assessed by a person with expertise in the area of plant health, or by any other person acting in an emergency situation or in any other situation that gives rise to an immediate risk of personal injury or damage to property; and
- (vi) the clearance is confined to removing the limb or other part of the plant causing the danger and only extends to destroying the plant if that is necessary to remove the existing danger.

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement)

The aim of this regulation is to permit **reasonable clearance for safety** reasons, both personal and property.

This regulation covers vegetation greater than 2 metres in height and is essentially designed to protect people or property from trees or tree branches that are likely to fall. For example, trimming of branches or possibly removal of the tree would be exempt if the tree is close to a house or other building and has branches that are weak and appear likely to fall on the building. Removal of the whole tree would be considered to be 'reasonable' where the whole tree was unsafe or where the trimming of unsafe branches would be so severe as to destroy the amenity value of the tree.

The regulation would also apply where the tree or tree branches were considered to be unsafe, and the tree was located in an area regularly used by people (eg. a children's playground). However, the regulation would not be applicable if it was reasonably practicable for a person to avoid being within the vicinity of the tree. For example, it would not be reasonable for a tree to be removed if it was located in the middle of a paddock, and people chose to take advantage of the tree's shade.

Landowners seeking to clear trees considered to be unsafe **must** obtain advice from a suitably qualified expert. Where clearance is undertaken in an emergency, it is suggested that a photographic record be taken of the situation.

This regulation applies to land covered under a heritage agreement.

Regulation

5(1)(la)

Clearance of limbs overhanging buildings

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the clearance involves the limb of a plant that is over hanging a building; and
- (ii) the clearance is confined to removing the limb (or a part of the limb to any point up to the trunk of the plant),

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement)

The aim of this regulation is to recognise the reasonable clearance of tree limbs overhanging buildings.

Clearance under this regulation is limited to overhanging limbs only. Clearance of whole trees for safety reasons may be undertaken in accordance with *Regulation 5(1)(l)*

This regulation applies to land covered under a Heritage Agreement.

Regulation

5(1)(lb)

Clearance to protect public safety

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (a) the clearance of the vegetation is necessary to protect public safety; and
- (b) the clearance is undertaken in accordance with a written approval of a person or body authorised by the Minister, by notice in the Gazette, for the purpose of this paragraph,

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement);

The aim of this regulation is to recognise reasonable clearance of whole trees for safety reasons when permission granted.

This regulation applies to land covered under a Heritage Agreement.

The Minister may vary or refuse any decision under this exemption.

Regulation

5(1)(p)

State Disaster

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -
 by the State Co-ordinator or an authorised officer acting under section 15 of the *State Disaster Act 1980*
 (and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement)

This regulation allows for clearance of native vegetation by person or persons acting under section 15 of the *State Disaster Act 1980*.

The regulation applies to land covered under a Heritage Agreement.

Regulation

5(1)(q)

Clearance for Firewood

[See Restrictions on Clearance of Vegetation 6(2) – page 38]

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -
 if—

- (i) the clearance is solely for the purpose of providing firewood for use by the owner of the land on which the vegetation was growing or was situated for the purpose of domestic heating or cooking; and
- (ii) the quantity of firewood provided by the clearance when aggregated with the quantity of firewood (if any) previously provided by clearance under this paragraph (or a previous corresponding paragraph) and not yet burnt does not exceed 6 cubic metres when calculated over the immediately preceding period of 2 years; and
- (iii) the vegetation has a stem diameter at 300 millimetres from the base of the plant of 200 millimetres or less; and
- (iv) in the case of living vegetation—the clearance does not kill the vegetation, does not prevent regrowth, and is undertaken at least 300 millimetres above the base of the plant; and
- (v) either—
 - (A) the vegetation is not of a class specified in Schedule 1; or
 - (B) the clearance complies with guidelines prepared by the Council for the purposes of this provision.

(Native Vegetation Regulations 2003 Schedule 1- River Red Gum, Eucalyptus camaldulensis)

This regulation provides for the harvesting of native vegetation for **firewood** for personal use by the owner of the land. This regulation allows a landholder to continue with traditional practices of gathering firewood from vegetation on his or her property, while placing some limits on those practices to ensure that the regulation is not used as a means of clearing the land on which the vegetation is growing.

All five parts of this regulation must be satisfied before it applies. It allows the owner of the land to cut native vegetation for firewood for the purpose of domestic heating and cooking, but only for the owner's personal use. Vegetation cut in accordance with this regulation cannot be sold or given away.

Over a continuous two-year period the amount of firewood cleared must not collectively exceed 6 cubic metres. The size of harvestable trees is restricted to those with a stem of 200mm or less at 300mm above ground level.

Living vegetation must be cut at least 300mm above the ground so as not to kill it or prevent regrowth and the cut vegetation must be allowed to regrow.

River Red Gums (of any size) are **not** permitted to be cleared under this regulation.

To provide for circumstances particular to a region of the State, the Native Vegetation Council may prepare guidelines that vary this regulation.

Regulation

5(1)(r)

Clearance for
Fenceposts

[See Restrictions
on Clearance of
Vegetation 6(2) –
see page 38]

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the clearance is solely for the purpose of—
 - (A) providing fence posts for the construction of permanent fencing on the land on which the vegetation was growing or was situated (or on other land owned by the owner of the land on which the vegetation was growing or was situated) for the purpose of controlling access by people or the movement of animals and is consistent with practices undertaken on the land over the immediately preceding period of 25 years; or
 - (B) repairing an existing fence on the land on which the vegetation was growing or was situated (or on the other land owned by the owner of the land on which the vegetation was growing or was situated) for the purpose of controlling access by people or the movement of animals; and
- (ii) the quantity of fence posts provided by the clearance when aggregated with the quantity of fence posts (if any) previously provided by clearance under this paragraph (or a previous corresponding paragraph) and not yet used does not exceed the quantity required by the plans the owner has when the clearance occurs for the construction of fencing on his or her land in the period of 2 years from the time of clearance; and
- (iii) the vegetation has a stem diameter at 300 millimetres from the base of the plant of 200 millimetres or less; and
- (iv) in the case of living vegetation—
 - (A) the vegetation was growing on land subject to a pastoral lease under the *Pastoral Land Management and Conservation Act 1989* the terms of which explicitly provide that vegetation on the land may be cleared for the sole purpose of providing fence posts; or
 - (B) the clearance does not kill the vegetation, does not prevent regrowth and is undertaken at least 300 millimetres above the base of the plant; and
- (v) the clearance has been undertaken in accordance with a management plan that has been approved by the Council; and
- (vi) either—
 - (A) the vegetation is not of a class specified in Schedule 1; or
 - (B) the clearance complies with guidelines prepared by the Council for the purposes of this provision.

(Schedule 1 – Rive Red Gum, *Eucalyptus camaldulensis*)

This regulation provides for the harvesting of native vegetation for fenceposts.

All six parts of this regulation must be satisfied before the regulation applies. It allows the owner of the land to harvest native vegetation for use as fenceposts for the construction of permanent fencing (but only if this has been the practice on the land in question over the preceding period of 25 years) or repairs to an existing fence, only on the owner's property and for the owner's personal use. Vegetation harvested under this regulation cannot be sold or given away.

The fence must be for the purpose of controlling access by people or the movement of animals.

At any one time, the amount cleared should be sufficient for the owner's requirements/plans for a period not exceeding two years from the time of clearance. Any trees with a stem diameter more than 200mm at 300mm above ground level may not be cleared.

Living vegetation must be allowed to regrow, or the area from where the vegetation has been harvested must be allowed to regenerate. The aim is to not permit the regulation to be used to clear land for any other purpose.

River Red Gums (of any size) are **not** permitted to be cleared under this regulation.

To provide for circumstances particular to a region of the State, the Native Vegetation Council may prepare guidelines that vary this regulation.

Regulation

5(1)(s)

Clearance for Fencelines

[See: **Restrictions on Clearance of Vegetation 6(2) - see page 38]**

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if the clearance is for the purpose of providing a strip of cleared land of not more than 5 metres in width on either side or both sides of an existing fence or of a fence in the course of construction to provide access for the purpose of maintaining or establishing the fence and—

- (i) the fence is reasonably required to control access by people or the movement of animals; and
- (ii) the clearance is required to give reasonable access to the fence and is limited to the extent reasonably required to achieve that access; and
- (iii) there is no other practicable alternative (including, in the case of a new fence, to the position of the fence) that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared,

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement but does not apply to vegetation on a road reserve)

The aim of this regulation is to allow landholders to clear a strip of native vegetation **up to** five metres wide to provide **access for fence maintenance or construction**. The purpose of the fence must be for controlling access by people or the movement of animals, and only if there is no practical alternative to the location of the fence that would involve no clearance.

The regulation does **not** provide an automatic right to clear a five-metre strip along a fence. If vegetation is located within five metres but does not impede reasonable access to the fence, the regulation cannot be used to clear that vegetation.

This regulation does **not** apply to native vegetation growing on road reserves. A separate regulation (see 5(1)(x) or 5(1)(y) below) applies to that situation.

This regulation applies to land covered under a heritage agreement.

Regulation

5(1)(t)

Clearance for Vehicle Track

[See: **Restrictions on Clearance of Vegetation 6(2) and 6(2a) – page 38]**

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if the clearance is for the purpose of establishing or maintaining an existing track that is not more than 5 metres in width for use by vehicles having at least 4 wheels and—

- (i) the track is reasonably required to provide access; and
- (ii) the clearance is limited to the extent reasonably required to achieve the relevant purpose; and
- (iii) there is no other practicable alternative (including, in the case of a new track, to the position of the track) that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared.

(but this paragraph does **not** apply to vegetation on a road reserve)

The aim of the regulation is to provide the establishment or maintenance of a **track** reasonably required **for vehicle access**, and there is no practical alternative to the location of the track that would involve no clearance. For example, the track might be reasonably sited in a fuel break or otherwise previously cleared land, or land that where the native vegetation is more degraded.

The track may be for general access to a property or for fire access purposes. However, the regulation is restricted to access tracks for use by vehicles with four or more wheels and does **not** allow for clearance of tracks for motor bikes, bicycles or walkers.

This regulation does not apply to native vegetation growing on road reserves. A separate regulation (see 5(1)(x) or 5(1)(y) below) applies to that situation.

Regulation

5(1)(u)

Clearance for Walking Track

[See: Additional Clarifying Regulation 5(10) - page 36 and Restrictions on Clearance of Vegetation 6(2) and 6(2a) – page 38]

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if the clearance is for the purpose of establishing or maintaining a walking track that is not more than 1 metre in width and—

- (i) the track is used, or is genuinely expected to be used, by pedestrians; and
- (ii) there is no other practicable alternative (including, in the case of a new track, to the position of the track) that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared, and
- (iii) the person undertaking the clearance complies with any guidelines determined or approved by the Council for the purpose of this provision.

(but this paragraph does not apply to vegetation on a road reserve)

The aim of this regulation is to allow for the clearance of a strip of vegetation no wider than 1 metre for the purpose of establishing or maintaining a **walking track** and only if there is no practical alternative to site the walking track that would involve no clearance. The track must be for the sole purpose of pedestrians.

The person who wishes to use this regulation must abide by guidelines approved by the NVC for the purpose of this regulation.

This regulation does **not** apply to native vegetation growing on road reserves. A separate regulation (see 5(1)(y) below).

Regulation

5(1)(y)

Roadside Vegetation

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

by, or on behalf of, a local council if—

- (i) the vegetation is growing on a road reserve in the area of the council; and
- (ii) the person undertaking the clearance complies with a management plan relating to the clearance prepared by the local council and approved by the Council or, if no such plan has been prepared and approved, with any guidelines prepared by the Council in accordance with section 25 of the Act relating to the clearance.

The clearance of native vegetation from roadsides is controlled under the Native Vegetation Act. However, this regulation allows for clearance by a local council, or someone acting on behalf of the local council, where the clearance complies with a roadside management plan that has been approved by the Native Vegetation Council.

If no such plan has been prepared and approved, the regulation allows clearance where this complies with guidelines issued by the Native Vegetation Council – “Guidelines for the Management of Roadside Vegetation”, which is available from the Native Vegetation Council Secretariat.

There is no compulsion for local councils to produce roadside vegetation management plans, but many have done so and have found the plans to be beneficial.

<http://www.dwlbc.sa.gov.au/native/nvsa/policy.html>

Regulation

5(1)(zb)

**Taking of
Seeds and
Specimens**

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared - if the clearance comprises the taking of—

- (i) a specimen; or
- (ii) a cutting for propagation; or
- (iii) such part of a plant as is required in order to obtain the seeds of the plant, and does not cause substantial damage to the plant.

The collection of seeds, cuttings or other specimens from native plants does not require consent from the Native Vegetation Council **provided** that damage to the plant is not substantial. As a guide, cutting a substantial branch off a tree or bush to collect seed would **not** be regarded as exempt; nor would the removal of virtually all harvestable seed from a single plant.

The collection of seeds, cuttings and specimens from native vegetation on private land requires the consent of the landholder. For collection from roadsides, the consent of the local council and National Parks and Wildlife SA is needed. A National Parks permit is also needed for any such collection from Crown land, including NPWSA Reserves.

Regulation

5(1)(zc)

**Mining
Activities
(Exploration)**

[See: Additional
Clarifying
Regulation 5(10)
- page 36]

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared –

if—

- (i) the clearance is incidental to exploratory operations authorised under the *Mining Act 1971* or the *Petroleum Act 2000*; and
- (ii) the clearance is undertaken in accordance with accepted industry environmental management practices for facilitating the regrowth of native vegetation, recognised by the Council for the purposes of this subparagraph; and
- (iii) there is no other practicable alternative that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared.

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement)

This regulation permits clearance incidental to exploration for minerals or fuels, provided that it complies with environmental practices facilitating regrowth of native vegetation that are accepted by the mining industry and recognised by the Native Vegetation Council. Exploratory activities must seek to minimise the impact on areas of native vegetation.

Note: this Regulation does not apply in relation to mining operations at a private mine (Regulation (7a).

Regulation

5(1)(zd)

Mining
Activities
(Operations)

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the clearance is incidental to operations authorised under a Mining Act; and
- (ii) —
 - (A) in the case of operations authorised under a Mining Act (other than the *Petroleum Act 2000*), the clearance is undertaken in accordance with a management plan under that Act and the Council has signified that, as a result of work undertaken in accordance with that plan, there will be a significant environmental benefit on the site of the operations or within the same region of the State, or the person undertaking the operations has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) of the Act; and
 - (B) in the case of operations authorised under the *Petroleum Act 2000*, the clearance is undertaken in accordance with a statement of environmental objectives under that Act and the Council has signified that, as a result of work undertaken in accordance with that statement, there will be a significant environmental benefit at the site of the operations or within the same region of the State, or the person undertaking the operations has, on application to the Council to proceed with clearing the vegetation in accordance with this provision, made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) of the Act.

(and the operation of this paragraph extends to vegetation on land that is subject to Heritage Agreement)

The aim of this regulation is to ensure that mining or petroleum operations that involve the clearance of native vegetation are to include works that will result in a significant environmental gain within the same region of the state.

If this is not achievable the proponent may apply (to the Native Vegetation Council) to make a payment into the Native Vegetation Fund that will be used by the Native Vegetation Council to achieve an environmental benefit elsewhere in the same region.

This regulation applies to land covered under a Heritage Agreement.

Note: this Regulation does not apply in relation to mining operations at a private mine (Regulation (7a)).

Regulation

5(1)(zda)

**Mining
Activities
(Operations
before 25
August 2003)**

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the clearance is incidental to operations authorised before 25 August 2003 under a Mining Act; and
- (ii) the clearance-
 - (A) is clearance that is envisaged or authorised by or under a program or approval under the relevant Act
 - (B) is clearance that would reasonably be expected to have been required under the authorisation under the relevant Act taking into account the circumstances that existed immediately before 25 August 2003.

This regulation allows clearance of native vegetation for the operations of a mine as long as the mine was authorised under the *Mining Act 1971* or the *Petroleum Act 2000* prior to 25 August 2003.

Clearance can only be that which would have been expected under the *Mining Act 1971* or the *Petroleum Act 2000* prior to 25 August 2003. Any new mining activities authorised under the *Mining Act 1971* or the *Petroleum Act 2000* are subject to the provisions of this regulation.

Note: this Regulation does not apply in relation to mining operations at a private mine (Regulation (7a)).

Regulation

5(1)(ze)

**Mining
Operations
Private Mine**

if the clearance is incidental to mining operations at a private mine at which mining operations have not been discontinued for a period exceeding 12 months at any time after 21 November 1984.

(and the operation of this paragraph extends to vegetation on land that is subject to a Heritage Agreement)

“private mine” - means land declared under the *Mining Act 1971* to be a private mine.

This is a more specific regulation than 5(1)(zd) relating to native vegetation clearance associated with private mining operations. The regulation applies at a given site provided that there has not been a break in the operations for more than a 12 month period since 21/11/84.

Regulation

5(1)(zf)

Clearance to
Maintain
Land for
Cultivation,
Pasture or
Forestry

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the land on which the vegetation is situated has been used for cultivation, pasture or forestry within 5 years immediately before the proposed clearance occurs; and
- (ii) the clearance is necessary to maintain the land so that it can continue to be used for cultivation, pasture or forestry to the extent to which it had been used for that purpose within the immediately preceding 5 years; and
- (iii) the vegetation to be cleared consists only of plants or parts of plants that have grown or have regrown in the immediately preceding 5 years; and
- (iv) either—
 - (A) the vegetation has a stem diameter at the lowest point on the stem above ground level of 150 millimetres or less; or
 - (B) the vegetation is of the genus *Xanthorrhoea*.

The aim of this regulation is to permit the **clearance of regrowth** of native vegetation on land that has been used for cultivation, pasture or forestry over the previous five years. All four parts ((i) – (iv)) of the regulation need to be satisfied.

Only vegetation that has grown or regrown in the immediately preceding 5 years can be cleared, provided that it has a stem diameter at the lowest point on the stem above ground level of 150mm or less.

Only clearance to allow the same level of use for cultivation, pasture or forestry as has applied within the last five years is exempt. Any clearance to achieve a greater area of cleared land than has existed within the previous five years requires a clearance application and consent from the Native Vegetation Council.

Reference to *Xanthorrhoea* (yacca or grass tree) in (B) means that, provided the other conditions apply, plants of this genus can be cleared even if the stem diameter is **greater than 150mm**.

Landholders wishing to clear regrowth older than 5 years should apply to the Native Vegetation Council for authorisation.

If a landholder does not believe he or she will be able to complete the clearance operation within five years, he or she may apply to the Native Vegetation Council to seek consent to the proposed works via an application or undertake the preparation of a management plan consistent with Regulation 5(1)(zfa).

See also regulation 5(1)(zg) for provisions relating to maintaining native vegetation for grazing purposes.

Regulation

5(1)(zfa)

**Clearance of
Regrowth
greater than
5 years old
for
agriculture**

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the vegetation to be cleared consists of plants that have regrown over a period time after previous clearance undertaken in accordance with provisions of the Act or these regulations; and
- (ii) the land on which the vegetation is situated has been consistently used for agricultural purposes as part of a commercial enterprise since the land was lawfully cleared; and
- (iii) the clearance is in accordance with a management plan that has been approved by the Council

This regrowth management regulation provides an alternative to the existing 'five year rule' regrowth exemption¹ (Regulation 5(1)(zf)).

The new regulation provides that landowners may clear native vegetation that has grown for more than five years on land consistently used for agriculture, subject to the works being undertaken in accordance with a management plan prepared by the landholder and approved by the Native Vegetation Council

A landowner may prepare a management plan to address the clearance of regrowth native vegetation on land that the landowner is able to demonstrate has been previously cleared and has since been consistently used for agricultural purposes. The Native Vegetation Council must approve that management plan before any works can be undertaken.

Clearance has to be undertaken in accordance with the approved management plan and will be subject to a review in accordance with an agreed time frame [Regulation 5(8)].

<http://www.dwlbc.sa.gov.au/native/regrowth/index.html>

Regulation

5(1)(zfb)

**Previously
cleared land
now
degraded
once used
for
agriculture**

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the Council is satisfied (on the basis of information provided to the Council by the person seeking the benefit of this paragraph and such other information as the Council thinks fit) –
 - (A) that the vegetation to be cleared is situated on the land that has been the subject of regional land degradation processes over a period of time and consists of plants that have grown on the land due to those processes; and
 - (B) that the land on which the vegetation is situated is being used, or has previously been used, for agricultural purposes but that use has been reduced or discounted (as they may be) due to the degradation; and
 - (C) that the clearance is being undertaken so as to enable the land to be used for agricultural purposes; and
- (ii) the clearance is undertaken in accordance with a management plan that has been approved by the Council.

This regulation allows for native vegetation to be cleared on land that has been subject to regional degradation and consists of plants that have grown due to those degrading processes. The land must be shown to have been used for agriculture in the past and that agricultural use has been reduced or discontinued as a result of the degradation.

Clearance may only be undertaken for the purpose of reestablishing the land for agricultural use and any clearance must be undertaken in accordance with a management plan approved by the Native Vegetation Council.

Note: the Native Vegetation Council must seek and consider the advice of the regional NRM board for the NRM Region where the relevant land is situated [Regulation 5(9)]

¹ The 'five year rule' exemption [Regulation 5(1)(zf)] allows for the clearance of native vegetation that has regrown on land used for agriculture or forestry within the previous five years in order to maintain the land for that use.

Regulation

5(1)(zg)

Clearance for Grazing

[See also 5(1)(zf) & (zh)]

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the native vegetation to be cleared comprises plants that are used, or are to be used, for grazing by domestic animals; and
- (ii) the purpose of the clearance is to maintain the value of the native vegetation for the purpose of pasture; and
- (iii) the clearance is in accordance with practices used during the previous 10 years on the land on which the vegetation is growing for the purpose of maintaining pasture; and
- (iv) the clearance is undertaken in accordance with a management plan that has been prepared by, or on behalf of, the owner of the land on which the vegetation is growing or by the soil conservation board for the soil conservation district in which the land is situated and has been approved by the Council.

The aim of this regulation is to provide for the **management of native vegetation for grazing purposes**. Management practices include burning of tussocks such as cutting grass in the South East and porcupine grass in the upper north district to promote new growth.

This regulation allows continuation of these practices provided that they have been used on the land during the previous 10 years and are described in a management plan approved by the Native Vegetation Council.

Regulation

5(1)(zh)

Grazing

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

- by grazing domestic stock on land in a manner and at a rate that will not cause permanent degradation of the native vegetation on the land but only if—

- (i) the manner and rate of grazing is consistent with the manner in which, and the rate at which, the land has been grazed by domestic stock of the same species during the previous 10 years; or
- (ii) —
 - (A) the owner of the land has prepared a management plan that applies to grazing of vegetation on the land by the relevant species of animal; and
 - (B) the owner of the land has satisfied the Council that the management plan complies with guidelines that have been prepared by the Council in accordance with section 25 of the Act; and
 - (C) the Council has given its approval to the management plan and, where the land on which the vegetation is growing is pastoral land, the Pastoral Board has also given its approval to the management plan; and
 - (D) the grazing occurs in accordance with the management plan.

Grazing of native vegetation by domestic stock can cause substantial damage and is therefore regarded as clearance in some situations. For example, introduction of stock into previously ungrazed native vegetation would require clearance consent from the Native Vegetation Council.

This regulation allows landholders to continue **grazing in areas containing native vegetation** provided that the type and rate of grazing is the same as has applied over the previous 10 years. A change from one type of stock to another (eg. sheep to cattle) would require clearance consent.

Clearance by grazing must be managed in a manner outlined in a management plan that has been endorsed by the Pastoral Board and the Native Vegetation Council.

Regulation

5(1)(zi)

Clearance for Preserving, Enhancing Ecological Processes

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if the purposes of the clearance is to preserve or enhance ecological processes and—

- (i) —
 - (A) the owner of the land has prepared a management plan that provides for monitoring the effects of the clearance; and
 - (B) the owner of the land has satisfied the Council that the management plan complies with guidelines that have been prepared by the Council in accordance with section 25 of the Act; and
 - (C) the Council has given its approval to the management plan; and
 - (D) the clearance is undertaken in accordance with the management plan; or
- (ii) the clearance is undertaken in accordance with guidelines that apply to the clearance that have been prepared by the Council in accordance with section 25 of the Act

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement)

This regulation covers situations where management of native vegetation to preserve or enhance biological diversity involves clearance. Examples include burning to regenerate old stands of vegetation or maintain habitat for threatened species.

This regulation allows landowners to establish and work in accordance with management plans that describe actions involving clearance and programs to monitor the effects of clearance as a means of enhancing or preserving biological diversity.

The person/s responsible for the clearing of the vegetation must do so under the guidelines of the management plan approved by the Native Vegetation Council.

This regulation applies to land covered under a Heritage Agreement.

Regulation

5(1)(zj)

**Native
Vegetation
Associated
with
Management
Problems**

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if the vegetation is causing land management problems because it is detrimentally affecting other native vegetation, or is growing on land previously cleared of native vegetation, and—

- (i) —
 - (A) the owner of the land has prepared a management plan relating to the proposed clearance; and
 - (B) the owner of the land has satisfied the Council that the management plan complies with guidelines that have been prepared by the Council in accordance with section 25 of the Act; and
 - (C) the Council has given its approval to the management plan; and
 - (D) the clearance is undertaken in accordance with the management plan; or
- (ii) the clearance is undertaken in accordance with guidelines that have been prepared by the Council in accordance with section 25 of the Act.

The aim of this regulation is to facilitate the clearance of native vegetation that is causing **land management problems**. Parts (i) or (ii) of this regulation need to be satisfied. It applies to native vegetation which is affecting the health of other native species. An example of this is mistletoe, a group of semi-parasitic native plants that can stress native trees in some situations.

The regulation also applies to other native plants which are regrowing on previously cleared land and causing management problems for landholders – problems which are not dealt with by regulation 5(1)(zf) (see above). An example of this is certain acacias regrowing on previously cleared lands in northern agricultural regions. Because of the large size of the properties and the slow growth of the acacias, regulation 5(1)(zf) may not be sufficiently flexible to enable effective management of these plants. Another example is reeds regrowing at boat ramps or pumping sites.

Native plants in these situations can be cleared if a plan dealing with their management has been approved by the Native Vegetation Council and the clearance is then in line with that plan.

The person/s responsible for the clearing of the vegetation must comply with the management plan approved by the Native Vegetation Council.

Regulation

5(1)(zk)

**Pest Control
– animal and
plant**

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) it is not reasonably practicable to comply with an obligation under the *Natural Resources Management Act 2004* to destroy or control animals or plants without at the same time destroying, damaging or otherwise clearing native vegetation; and
- (ii) the person undertaking the clearance complies with guidelines relating to the clearance prepared by the Council in accordance with section 25 of the Act,

(and the operation of this paragraph extends to vegetation on land that is subject to a heritage agreement but does not apply to vegetation on a road reserve)

The intention of this regulation is to facilitate pest animal or plant control in such a way that the impact on native vegetation is minimised. The Regulation allows for clearance of native vegetation where this is essential for the control of pest plants or animals, but only applies where that clearance is in line with guidelines issued by the Native Vegetation Council. In preparing the guidelines, the Native Vegetation Council is required to consult the Animal and Plant Control Commission and several other community groups.

Both parts (i) and (ii) of this regulation need to be satisfied.

This regulation recognises that there will be some situations where the control of scheduled pests will not be possible without some damage to associated native vegetation. As long as the guidelines are applicable, no clearance consent will be required from the Native Vegetation Council.

This regulation applies to land covered under a Heritage Agreement.

<http://www.dwlbc.sa.gov.au/native/nvsa/policy.html>

Regulation

5(1)(zl)

**Upper South
East Drains**

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the land on which the vegetation is situated is in the County of Cardwell or within the hundreds of Stirling, Willalooka, Duffield, Landseer, Peacock, Marcollat, Minecrow, Woolumbool, Townsend, Lochaber, Murrabinna, Spence or Joyce; and
- (ii) the clearance is to provide cleared land—
 - (A) for the purposes of the construction or maintenance of water management works within the meaning of the *South Eastern Water Conservation and Drainage Act 1992* by, or on behalf of, the South Eastern Water Conservation and Drainage Board pursuant to section 34 of that Act; or
 - (B) for the purposes of the implementation of the Project under the *Upper South East Dryland Salinity and Flood Management Act 2002* by, or on behalf of, the relevant Minister under that Act; and
- (iii) the Board, the relevant Minister or a person acting on behalf of the Board or that Minister has prepared a management plan in relation to the clearance of the vegetation and the Native Vegetation Council has given its approval to the plan; and
- (iv) the clearance is undertaken in accordance with the management plan.

The aim of this regulation is to provide for clearance of native vegetation for the **construction of drains** by or on behalf of the South Eastern Water Conservation and Drainage Board within certain parts of the south east (County of Cardwell) of the state.

All parts of this regulation need to be satisfied.

That clearance must be undertaken in accordance with a management plan prepared by the Board and approved by the Native Vegetation Council. Any clearance must comply with the approved management plan.

Regulation

5(1)(zm)

**Streaky Bay/
Port Lincoln
Water
Catchment**

Pursuant to Section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared -

if—

- (i) the land on which the vegetation is situated is in the County of Flinders or Robinson; and
- (ii) the clearance is necessary to preserve or augment an underground water supply of a city or town; and
- (iii) the clearance has been requested by the local council; and
- (ii) the owner of the land or the person who has care, control and management of the land has prepared a management plan in relation to the clearance of the vegetation and the Native Vegetation Council has given its approval to the plan; and
- (iii) the clearance is undertaken in accordance with the management plan.

The aim of this regulation is to provide for the clearance of native vegetation as requested by a local Council within established water reserves near Streaky Bay and Pt Lincoln. Clearance requires the development of a management plan that must be approved by the Native Vegetation Council. Any clearance must comply with the approved management plan.

All parts of this regulation need to be satisfied.

Regulation

5A

Clearance for
Fire
prevention
and control

Pursuant to section 27(1)(b) of the Act and subject to these regulations, native vegetation may be cleared in the following circumstances (being circumstances in which the clearance is for a purpose related to fire prevention or control):

- (a) if—
 - (i) the vegetation is growing or situated—
 - (A) more than 20 metres from a prescribed building; or
 - (B) more than 5 metres from a prescribed structure; and
 - (ii) the clearance is undertaken in accordance with the written approval of the Chief Officer of SACFS;
- (b) if—
 - (i) the purpose of the clearance is to reduce combustible material on land; and
 - (ii) the clearance—
 - (A) is required or authorised by, and undertaken in accordance with, a bushfire prevention plan; or
 - (B) is undertaken in accordance with the written approval of the Chief Officer of SACFS; or
 - (C) in the case of a clearance in a reserve constituted under the *National Parks and Wildlife Act 1972* or in a wilderness protection zone or area constituted under the *Wilderness Protection Act 1992*—the clearance is undertaken in accordance with a standard operating procedure determined or approved by the Council for the purposes of this subsubparagraph; or
 - (D) in the case of a clearance on any other land of a class declared by the Minister by notice in the Gazette to be a class of land to which this subsubparagraph applies—the clearance is undertaken in accordance with a standard operating procedure determined or approved by the Council for the purposes of this subsubparagraph;

This regulation allows land owners and land managers to clear native vegetation for the purposes of fire protection or control where the clearance is **more than 20 metres** of a *prescribed building* or **more than 5 metres** of the *prescribed structure*. The clearance must be undertaken in accordance with the written approval of the Chief Officer (or authorised delegate) of the SA CFS.

Prescribed buildings include houses and buildings within the meaning of the *Development Act 1993* that are permanently fixed to the land and include a dwelling, hotel, motel, school, office building, shop, café, or restaurant, service station, factory or hospital and extends to a building that is in the course of construction if the foundations, concrete slab or other footings have been completed (see page 36).

Prescribed buildings do **not** include non habitable structures such as fences, swimming pools, retaining walls, masts and antennas or carports.

Prescribed structures include constructions used for primary production, the housing or feeding of animals, the storage of fodder, and the storage of vehicles or vessels, pump sheds, garden and pool sheds and fixed aviaries (see page 36).

The Minister is able to either add or remove a class of building or structure from this definition by notice in the SA government gazette.

The clearance of native vegetation to reduce the levels of combustible materials can occur if the works are undertaken in accordance with an approved bushfire prevention plan **or** is authorised by the Chief Officer (or authorised delegate) of the SA CFS.

Clearance for fire prevention and control within a reserve under the *National Parks and Wildlife Act* or *Wilderness Protection Act* can occur if it is undertaken in accordance with a Standard Operating Procedure (SOP) approved by the Native Vegetation Council (NVC).

Similarly SOP's approved by the NVC provide the mechanism for fuel reduction works on land gazetted by the Minister for Environment and Conservation on other lands eg. land owned or managed by SA Water or Forestry SA.

Regulation

5A

Clearance for
Fire
prevention
and control -
Fuel breaks

Continued

- (c) if the clearance is undertaken by, or in accordance with a direction or determination of—
- (i) an officer of SAMFS exercising a power conferred under section 42 of the *Fire and Emergency Services Act 2005*; or
 - (ii) an officer of SACFS exercising a power conferred under section 82 or 97 of the *Fire and Emergency Services Act 2005*; or
 - (iii) a responsible authority (within the meaning of section 83 of the *Fire and Emergency Services Act 2005*) exercising a power under that section; or
 - (iv) an officer of SASES exercising a power conferred under section 118 of the *Fire and Emergency Services Act 2005*;
- (d) if—
- (i) the clearance is for the purpose of establishing or maintaining a fire access track; and
 - (ii) is undertaken in accordance with the written approval of the Chief Officer of SACFS;
- (e) if—
- (i) the clearance is for a fuel break that is—
 - (A) along an existing fence-line; or
 - (B) on the boundary between land owned by different persons, where part or all of the proposed fuel break is in an area of a mallee scrub community that is the subject of a declaration by the Council under subregulation (7) that is in force; or
 - (C) on a property situated in the area of a rural council and that is used principally for primary production; or
 - (D) required or authorised by a bushfire prevention plan; and
 - (ii) the clearance complies with the following provisions:
 - (A) in the case of fuel break along an existing fence-line—the total width of the fuel break must not exceed 5 metres;
 - (B) in the case of fuel break on the boundary between land owned by different persons in an area of a mallee scrub community (being an area that is the subject of a declaration under subregulation (7))—the total width of the fuel break must not exceed 7.5 metres;
 - (C) in the case of a fuel break on a property situated in the area of a rural council used principally for primary production—
 - the total width of the fuel break must not exceed 20 metres; and
- the clearance must either be required by or authorised under a bushfire prevention plan; or undertaken in accordance with the written approval of the Chief Officer of SACFS;

Authorised officers of the SA CFS, SA MFS and SA SES can authorise the clearance of native vegetation where the clearance is considered necessary to control a running fire.

The Chief Officer (or authorised delegate) of the SA CFS can authorise the clearance of native vegetation to establish or maintain a fire access track.

Note: Guidelines on the type and widths of fire access tracks are available from the following web site:

<http://www.dwlbc.sa.gov.au/native/nvsa/policy.html>

This regulation provides for the clearance of native vegetation for the construction and maintenance of fuel breaks on properties, where

- the fuel break follows an existing fenceline and the width of the fuel break does not exceed 5 metres, or
- the fuel break follows a property boundary in the mallee districts of the state agreed by the Native Vegetation Council and the fuel break does not exceed 7.5 metres, or
- the fuel break is located on a property used for primary production and within a rural council, the width of the fuel break does not exceed 20 metres and
 - the clearance is authorised by an approved bushfire prevention plan, or
 - the clearance is undertaken in accordance with the written approval of the Chief Officer (or authorised delegate) of the SA CFS,
- the width of the fuel break is consistent with an approved bushfire prevention plan.

In all cases, fuel breaks involving the clearance of native vegetation are only exempt from the need to obtain further approval where

- there are no other cleared areas within 200 metres of the proposed fuel break that in itself would constitute an adequate fuel break (except where the fuel break runs at approximately right angles to the proposed fuel break).

Landowners and land managers may apply to the Native Vegetation Council for clearance for a proposed fuel where that clearance is not exempt by any of the above situations.

Regulation

5A

**Clearance for
Fire
prevention
and control -
Fuel breaks**

Continued

(D) in any case—the clearance is undertaken in accordance with a bushfire prevention plan applying to the area in which the vegetation is growing or situated;

- (f) if the clearance is otherwise required or authorised by, and is carried out in accordance with, a bushfire prevention plan applying to the area in which the vegetation is growing or situated.
- (2) However, subregulation (1)(e) does not authorise the clearance of native vegetation for a fuel break if any point of the proposed fuel break would be within 200 metres of any land—
- (a) that is sufficiently clear of vegetation so as to constitute a fuel break (other than a fuel break that runs approximately at right-angles to the proposed fuel break); and
 - (b) that provides comparable protection to the proposed fire break.

Note—This subregulation does not prevent a person from applying to the Council for consent to clear such a fire break.

- (3) For the purposes of subregulation (2)(a), in determining whether a proposed fuel break is within 200 metres from any land that is sufficiently clear of vegetation so as to constitute a fuel break, the following matters are not to be taken into account:
- (a) whether or not the land is a fuel break cleared under this regulation or a previous provision of these regulations;
 - (b) whether or not the land is owned by the same person or different persons.
- (4) In granting an approval for the purposes of this regulation, the Chief Officer—
- (a) may only grant the approval if he or she is satisfied that the clearance is reasonably required or appropriate for the purpose of fire prevention or control; and
 - (b) must have regard to any relevant bushfire prevention plan; and
 - (c) must have regard to any guidelines specified by the Minister for the purposes of this subregulation.
- (5) The operation of this regulation extends to vegetation on land that is subject to a heritage agreement.
- (6) Nothing in this regulation authorises the clearance of native vegetation if such clearance would be contrary to any other Act or law.
- (7) The Council may, by notice in the Gazette, declare that subregulation (1)(e)(i)(B) applies in relation to an area of a mallee scrub community identified in the notice and may, by subsequent notice in the Gazette, vary or revoke such a declaration.

In determining a proposal to clear native vegetation for a fuel break on land that may be within 200 metres of existing cleared land, the Chief Officer SA CFS (or authorised delegate) should not consider if the land was originally cleared as a fuel break under the current or previous vegetation clearance legislation or if the land is owned by the same or different people.

In granting approval to clear a fuel break, the Chief Officer SA CFS (or authorised delegate) can only grant consent if it is believed that the fuel break is reasonably required for prevention or control purposes, and in doing so must have regard to any relevant bushfire prevention plan and guidelines prepared by the Minister for Environment and Conservation.

Clearance for fuel breaks consistent with this regulation include clearance on land protected under Heritage Agreement.

Any clearance of native vegetation authorised by this regulation does not imply authorisation under any other Act or law.

The Native Vegetation Council can vary the areas where a landowner can clear fuel breaks up to 7.5 metres in width, by notice in the SA Government Gazette.

Regulation

5A

Clearance for Fire prevention and control - Fuel breaks

Continued

Pursuant to section 27(1)(b) of the Act and subject to these regulations, native vegetation may be cleared in the following circumstances (being circumstances in which the clearance is for a purpose related to fire prevention or control):

(8) In this regulation—

bushfire prevention plan means a plan for bushfire prevention prepared by a district bushfire prevention committee under the *Fire and Emergency Services Act 2005*, as in force from time to time;

fire access track means a track (not exceeding 15 metres in width) constructed for use by vehicles undertaking firefighting activities;

firefighting has the same meaning as in the *Fire and Emergency Services Act 2005*;

prescribed building has the same meaning as in regulation 5;

prescribed structure has the same meaning as in regulation 5;

rural council has the same meaning as in the *Fire and Emergency Services Act 2005*.

Clarifying Regulations

Regulation 5(1a)

For the purposes of subregulation (1)(d), **infrastructure** includes, unless the contrary intention appears—

- (a) flood mitigation works;
- (b) an airstrip;
- (c) a shipping channel.

Regulation 5(1b)

For the purposes of subregulation (1)(da), the Council must ensure that guidelines are prepared in accordance with the procedures that apply to guidelines under section 25 of the Act.

Regulation 5(2)

A notice authorising a person for the purposes of subregulation (1)(lb) may be of general application or vary in its application according to prescribed factors.

Regulation 5(3)

The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subregulation (1)(lb).

This regulation recognises that specialist expertise within the SACFS is required in the provision of advice and direction in accordance with clearance for fire protection around houses.

This clarifying Regulation expands the definition of infrastructure found in the body of the *Native Vegetation Act 1991*.

Clarifies that a notice in the gazette authorising the clearance of native vegetation for the purpose of public safety can be of a general nature and may be varied

The Minister may vary or revoke an authorisation previously gazetted allowing the clearance of native vegetation for public safety purposes.

**Regulation
5(10)**

The Council may, in determining whether there is a practicable alternative to a particular course of action under consideration under this regulation, take into account the cost of any alternative.

This regulation allows the Native Vegetation Council to take into consideration the additional costs that may be associated with the shifting proposals that will impact on areas of native vegetation

**Regulation
5(11)**

For the purposes of this regulation (and without limiting any other provision), the Council may—

- (a) require a person seeking the benefit of this regulation for a particular purpose to provide to the Council such information as the Council may reasonably require to determine the matter;
- (b) direct that any information to be provided to the Council be in a form determined by the Council (after consulting with any relevant person as the Council thinks fit);
- (c) direct that a person comply with any other requirement determined by the Council (including a requirement as to the form or content of any plan or other document).

This regulation allows the Native Vegetation Council to

Seek provide the necessary information for the Native Vegetation Council to be able to make a decision on an issue

Require that information to be in a form that the Native Vegetation Council considers to be appropriate, and

Require any applicant to comply with these and any other provisions required by the Council before an application will be considered.

**Regulation
5(12)**

In this regulation-

Building Code has the same meaning as in the *Development Act 1993*;

Prescribed building means—

- (a) a building within the meaning of the *Development Act 1993* (other than a Class 7A or 10B building under the *Building Code*) that is permanently fixed to land; and
- (b) a building of a kind contemplated by paragraph (a) that is in the course of construction if the foundations, a concrete slab or other footings have been completed; and
- (c) any other building or structure of a class declared by the Minister by notice in the Gazette to be included in the ambit of this definition, but does not include any building or structure declared by the Minister by notice in the Gazette to be excluded from the ambit of this definition;

Prescribed structure means—

- (a) a structure that is permanently fixed to land and used for, or in relation to, 1 or more of the following purposes:
 - (i) primary production;
 - (ii) the housing or feeding of animals;
 - (iii) the storage of fodder;
 - (iv) the storage of vehicles or vessels;
 - (v) any other purpose declared by the Minister by notice in the Gazette to be included within the ambit of this paragraph; and
- (b) any other structure of a class declared by the Minister by notice in the Gazette to be included within the ambit of this definition, but does not include—
- (c) a prescribed building; and
- (d) any structure of a class declared by the Minister by notice in the Gazette to be excluded from the ambit of this definition.

This clarifying Regulation expands the definition of building code found in the *Native Vegetation Regulations 2003*.

5(13)

The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subregulation (12).

Restrictions on clearance of vegetation

Regulation 6(1)

Restriction on clearance around the Murray

- (1) Native vegetation may not be cleared pursuant to regulation 5(1)(k)—
- (a) if the vegetation—
- (i) consists of a tree that has a trunk circumference (measured at a point 300 millimetres above the base of the tree) of 2 metres or more; and
 - (ii) is situated within the 1956 flood plain of the River Murray, other than where the vegetation is within the area of a city or township; or
- (b) in any circumstances declared by the Minister, by notice in the Gazette, to be included in the ambit of this subregulation.
- (1a) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subregulation (1)(b).

Regulation 6(2)

Limits clearance of vegetation - condition of earlier consent

- Native vegetation may not be cleared pursuant to regulation 5(1)(a), (ab), (b), (j), (q), (r), (s), (t), or (u) if—
- (a) the clearance would be contrary to the requirements of a condition attached to a consent to clearance granted by the Council under the Act or by the Native Vegetation Authority under the repealed Act or of an order of a court under the Act or the repealed Act; or
 - (b) the vegetation was sown or planted in compliance with a condition attached to a consent to clearance granted by the Council under the Act or by the Native Vegetation Authority under the repealed Act or in compliance with an order of a court under the Act or the repealed Act.

Regulation 6(2a)

Native vegetation may not be cleared pursuant to regulation 5(1)(t) or (u) if the vegetation is situated within the River Murray Floodplain Area.

Regulation 6(3)

In this regulation—

“*township*” has the same meaning as in the *Local Government Act 1999*.

The clearance of larger trees (2 metres circumference when measured 300mm above ground level) where those trees occur within the River Murray Flood Plain (as measured by the 1956 floods) and are outside of a city or township boundary, require a clearance consent.

The Minister may vary or refuse any decision under this exemption.

This regulation limits the circumstances where native vegetation can be cleared under established exemptions if that vegetation was required to be established either as a condition of a clearance consent by the Native Vegetation Council (or the Native Vegetation Authority under the 1985 clearance legislation) or was required to be planted and maintained by an Order of the Courts.

Clearance for construction of vehicle or walking tracks is not exempted within the River Murray Floodplain Area and requires clearance consent from the Native Vegetation Council. The Native Vegetation Council is required to consult with the Minister for the River Murray before making a decision on these applications.

Township means any government township and land laid out as a township where plans of the township have been deposited in the Lands Titles Registration Office, the General Registry Office or the Surveyor’s-General Office; or Any part of the area of a Council that contains at least 20 residences and that is defined as a township by the Council by notice in the “Gazette”.

Regulation

8

Application
for consent

Restrictions on clearance of vegetation

- (1) For the purposes of section 28(3)(b)(iia) of the Act, the prescribed number of copies is 1.
- (2) For the purposes of section 28(3)(b)(iii) of the Act, the prescribed fee is **\$483** plus the fee referred to in subregulation (3).
- (3) The fee payable by an applicant for consent to clear native vegetation for the preparation of the report referred to in section 28(3)(b)(iia) of the Act is the Minister's estimate of the reasonable cost of preparing a report of that kind determined after consultation with the Council.
- (4) The Council may remit payment of, or refund, the whole, or part, of a fee payable or paid in relation to an application (including a fee for a report under section 28(3)(b)(iia) of the Act).
- (5) For the purposes of section 28(5) of the Act, any agency, instrumentality, person or body approved by the Council as an entity that may prepare a report of the relevant kind is specified.

This regulation:

- establishes the number of copies of a data report required to be submitted with an application;
- establishes the application fee required with any application;
- allows the Minister (for Environment and Conservation) to establish reasonable level of fee for the collection and preparation of a data report;
- makes provision for the Native Vegetation Council to review the level of application fee, including waiving the fee if considered appropriate; and
- establishes that the Native Vegetation Council can approve persons or agencies that are able to prepare any necessary reports.