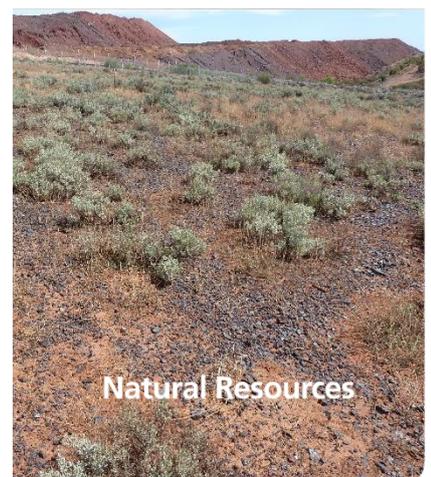


Guide for a Significant Environmental Benefit for the clearance of native vegetation associated with the Minerals and Petroleum Industry

Native Vegetation Council
August 2017



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1. Introduction

Purpose

The purpose of this Guide is to provide operators that undertake activities subject to the *Mining Act 1971* or the *Petroleum and Geothermal Energy Act 2000* with an understanding of:

1. the process for obtaining approval to clear native vegetation
2. the Significant Environmental Benefit requirements under the *Native Vegetation Act 1991* and *Native Vegetation Regulations 2017*.

Background

Native vegetation and the services that it provides (such as essential habitat for South Australia's unique species, protection of land and water from degradation, and ecosystem services) are vital to the continuing health and prosperity of communities and natural resource-based industries.

Native vegetation in South Australia (except in metropolitan Adelaide) is protected under the provisions of the *Native Vegetation Act 1991* (the Act) and is administered by the Native Vegetation Council (NVC).

Exploration and mining operations in South Australia are subject to the requirements of a number of mining Acts, including the *Mining Act 1971* and the *Petroleum and Geothermal Energy Act 2000*. These Acts, as well as the *Opal Mining Act 1995*, the *Offshore Minerals Act 2000* and the *Roxby Downs (Indenture Ratification) Act 1982* are administered by the Department of the Premier and Cabinet¹ (DPC).

In relation to activities conducted under the *Mining Act 1971* and *Petroleum and Geothermal Energy Act 2000*, the *Native Vegetation Regulations 2017* (the Regulations) provide a number of exemptions that allow for clearance of native vegetation. However, for some exemptions to apply, there is a requirement to provide a Significant Environmental Benefit (SEB) approved by the NVC. Clearance relating to petroleum activities and mining operations², and in certain circumstances exploration activities³, may require an SEB to compensate for the clearance of native vegetation. This is to ensure that development can occur while maintaining the integrity and health of our native vegetation and ecosystems. The Regulations that describe these circumstances and the exemptions that apply are set out in Appendix 3.

The NVC has delegated its powers and functions to DPC in relation to Regulation 14 - Mining and Petroleum Operations and Regulation 15 - Exploration Operations. This delegation allows DPC to operate as the 'one window' to government for resource companies. A requirement of the delegation is that DPC administers the delegation in accordance with this Guide.

¹ The Minerals and Energy Resources Divisions responsible for the assessment of minerals, petroleum and geothermal licences, leases and associated documents (current at the time of writing)

² Schedule 1 Part 5 Division 1 of the *Native Vegetation Regulations 2017*

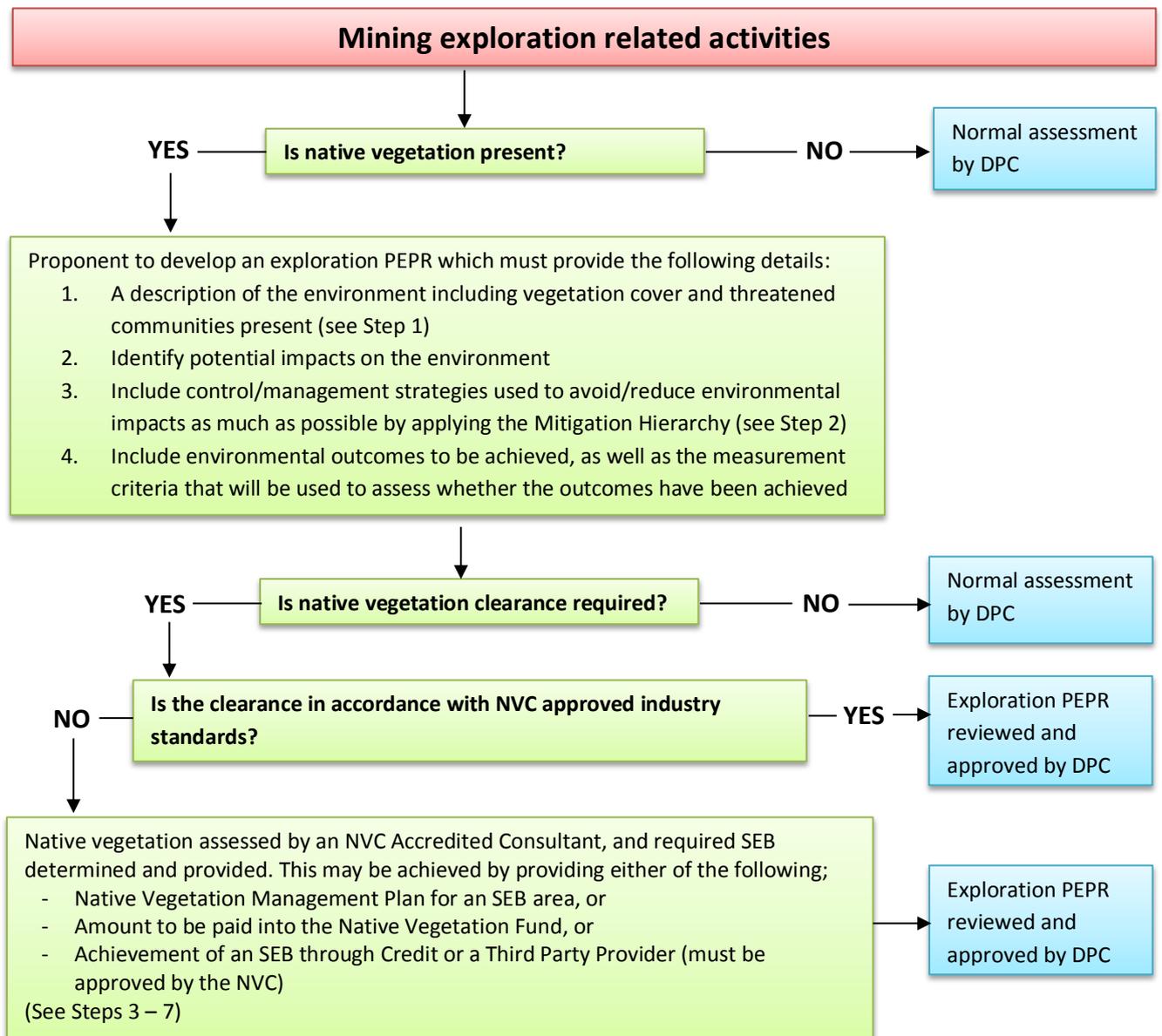
³ Schedule 1 Part 5 Division 2 of the *Native Vegetation Regulations 2017*

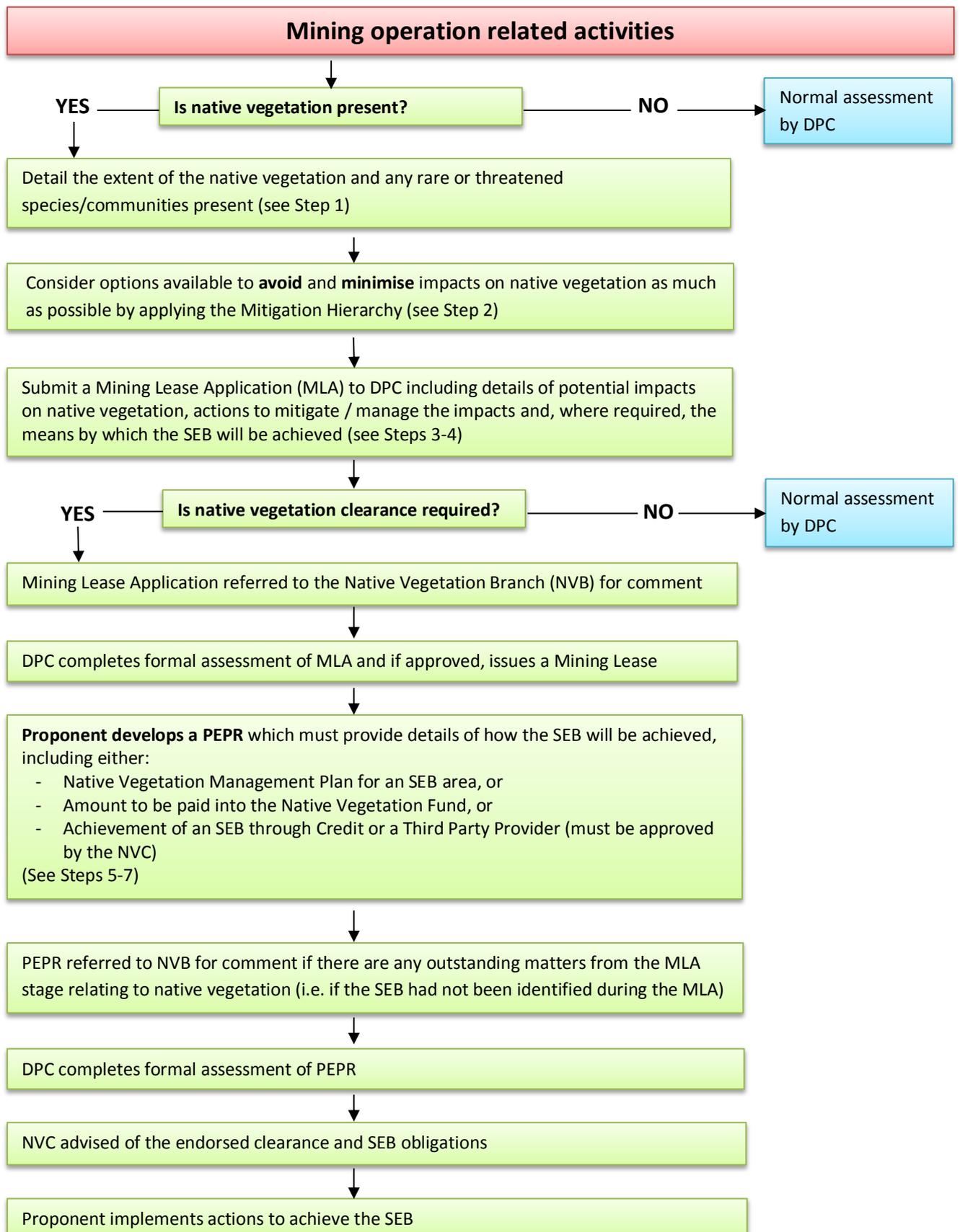
2. Summary of referral and assessment process

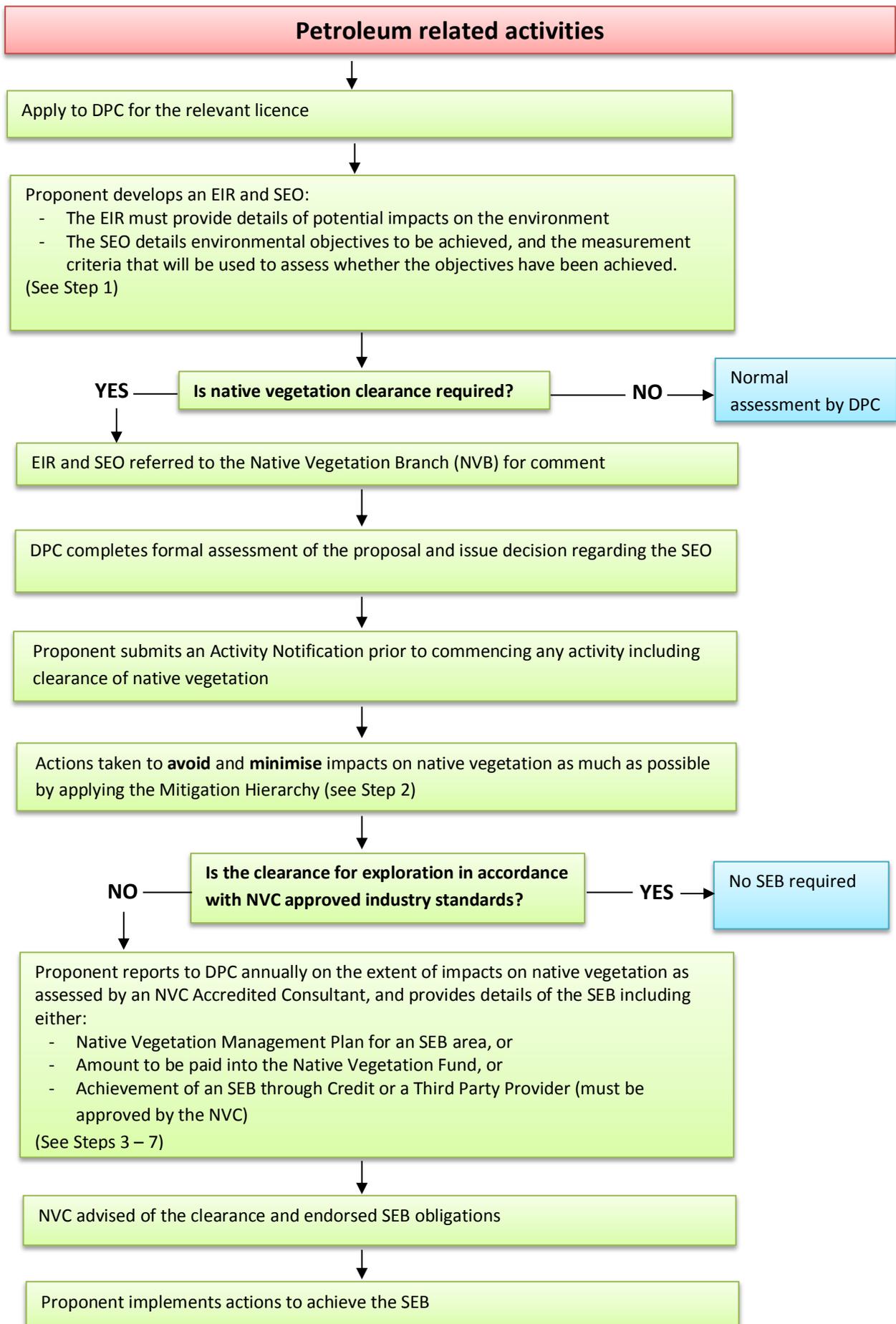
The referral and assessment process for mining and petroleum activities that involve clearance of native vegetation is set out in the following flow charts.

Further information regarding the process (including the steps in the charts below) are outlined on **pages 11-15** of this document.

Early engagement with DEWNR during the project proposal and feasibility stages is strongly encouraged. This enables early identification and discussion on any potential issues or concerns.







3. Significant Environmental Benefit (SEB)

An SEB is intended to be an area of land that is protected and managed for environmental conservation. The aim of an SEB is to compensate for (or offset) the loss of native vegetation from an approved clearance activity to ensure there is an overall environmental gain. The Act and the Regulations provide four ways in which a proponent can achieve an SEB:

1. Establishing and managing native vegetation on land (approved by the NVC). This may involve revegetating an area of land and managing that area to enable it to re-establish as native vegetation.
2. Protecting and managing existing areas of native vegetation on land (approved by the NVC). This may involve managing an area of remnant vegetation by removing threats such as stock grazing, weeds and pests, and public access.
3. Entering into a Heritage Agreement which provides for ongoing protection of established native vegetation on land (approved by the NVC and Minister for Sustainability, Environment and Conservation). This involves the management and in perpetuity protection of an area of vegetation to prevent future impacts.
4. Achieving the SEB either through engaging an Accredited Third Party Provider or using or obtaining existing SEB Credit. These options must be achieved in accordance with the requirements of Part 4A of the Act.

If the proponent cannot achieve an SEB by one or a combination of these options, the proponent may make a payment into the Native Vegetation Fund (the Fund) for the SEB or any shortfall. Money paid into the fund will be used by the NVC to establish, regenerate, preserve and maintain native vegetation on land in the same region of South Australia as the proposed clearance, or in another region if undertaken in accordance with Section 21 (6a) of the Act.

Third Party and Credit SEB

The Act was amended in 2013 to allow for greater flexibility in providing an SEB. In particular, the Act now allows for a proponent to engage directly with a Third Party to provide the SEB on their behalf. This may involve either:

- an Accredited Third Party Provider identifying and establishing a new SEB, or
- a landholder providing Credit from an established SEB area.

This allows proponents to partner with organisations or landholders to achieve the necessary outcomes, while providing proponents the ability to select and be directly involved with the establishment of the SEB, without being responsible for the delivery and ongoing management. Any dealings between the two parties, including contractual arrangements, are a private arrangement.

The NVC maintains a publicly available register for Accredited Third Party Providers and SEB Credit Holders (see <http://www.environment.sa.gov.au/managing-natural-resources/native-vegetation/clearing-offsetting/clearance-applications/clearance-application-register>). Clearance proponents can use the register to search for and identify a person or body who may be able to achieve their SEB requirements.

Difference between Rehabilitation Security Bonds and SEB

Rehabilitation Security Bonds (RSB) under the *Mining Act 1971* and *Petroleum and Geothermal Energy Act 2000* are used both as an enforcement tool to encourage compliance with legislative obligations, and to minimise the chance that the State is burdened with financial liabilities from operators who become insolvent. An RSB must be lodged to ensure the obligations in relation to the rehabilitation of land disturbed by mining operations are met by the licensee and not by public funding, and must be in the form of an unconditional bank guarantee or cash, and lodged prior to the commencement of mining operations.

More specifically, an RSB aims to:

- ensure compliance with relevant Acts, Regulations and licence conditions

- minimise the potential financial liability for the State Government arising from financial failure of licensees who have undertaken activities, and
- encourage compliance with requirements for mine/facility decommissioning and to encourage progressive rehabilitation.

RSBs are normally based on the risk of default and cost to DPC to complete full rehabilitation of all disturbances on the tenement. The requirement to provide an SEB where native vegetation has been cleared is a requirement under the Native Vegetation Act, and is in addition to onsite rehabilitation requirements.

SEB approval process

Under the *Mining Act 1971*, construction and operation of a mining activity can only be undertaken within a granted mining lease. All mining leases require that the mining operation is carried out in an orderly and skilful manner in accordance with an approved Program for Environment Protection and Rehabilitation (PEPR).

Under the *Petroleum and Geothermal Energy Act 2000*, all regulated activities must have an approved Statement of Environmental Objectives (SEO) in place with which entities must comply. The SEO relates to, amongst other matters, construction activities, operational activities, decommissions and rehabilitation. The SEO is developed through an open, consultative process, based on information provided in the associated Environmental Impact Report (EIR).

Where mining related activities will involve clearance of native vegetation and an SEB will be required, approval must be obtained from the NVC for the SEB. However as previously outlined, DPC has delegation from the NVC to administer SEB requirements for exploration and production activities under the *Mining Act 1971* and *Petroleum and Geothermal Energy Act 2000*. This delegation must be administered in accordance with this Guide and will apply the policies and conditions of the NVC relating to clearance and SEB requirements on behalf of the NVC.

The implementation of this delegation allows mining and petroleum companies to continue dealing with DPC as the 'one window' to government without the need to provide a separate application to the NVC.

Prior to undertaking any clearance of native vegetation, the proponent will need to do the following:

- determine the extent of the proposed clearance of native vegetation and whether it can be reasonably avoided or reduced
- if vegetation clearance cannot be avoided, provide a Native Vegetation Data Report prepared by an NVC Accredited Consultant detailing the extent of proposed impacts and the associated SEB requirement
- determine how an SEB is proposed to be achieved and either submit an Native Vegetation Management Plan (NVMP) for an on ground SEB; apply to achieve the SEB through Credit or a Third Party Provider; or determine the amount that needs to be paid into the Fund.

The following documents have been prepared and endorsed by the NVC for the use in assessing native vegetation clearance and determining SEB requirements:

- [Guide for applications to clear native vegetation under the Native Vegetation Act 1991 and Native Vegetation Regulations 2017 \(Clearance Guide\)](#)
- [Guide for calculating a Significant Environmental Benefit under the Native Vegetation Act 1991 and Native Vegetation Regulations 2017 \(SEB Guide\)](#)
- [Policy for a Significant Environmental Benefit under the Native Vegetation Act 1991 or under the Native Vegetation Regulations 2017 \(SEB Policy\)](#).

The information relating to clearance of native vegetation and the associated SEB will be detailed in the PEPR for mining related activities, or in annual reporting provided to DPC in relation to petroleum activities undertaken under an approved SEO.

The role of DPC is to assess the draft PEPR or SEO, to ensure that appropriate environmental standards (objectives) are met. In setting appropriate standards, DPC will consult with all persons likely to be directly affected by the proposed operation. The NVC will be consulted regarding any PEPR or SEO where native vegetation may be impacted as a result of the proposed development. DPC also has an obligation to assure the public generally that the established environmental standards are being met.

Long term staged mining operations – staged SEB

The proponent may have the option (where mining is a long term operation) to undertake staged offset activities in parallel with staged clearance activities. For example, the SEB can be provided prior to the clearance occurring for each stage of the development. This will be assessed on a case-by-case basis and Biodiversity Offset Principles, as set out in the SEB Policy, will be applied (e.g. need to be able to demonstrate there is a net gain).

Approval under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

If nationally threatened species, communities or other matters of national significance listed under the EPBC Act are identified within the area to be cleared, to avoid triggering that Act a proponent must provide evidence that the proposed clearance will not have a significant impact (as defined under the EPBC Act) on that species or community or matter of national significance. Otherwise, the matter will be deemed a 'controlled action' and require assessment and approval under the EPBC Act.

On 24 October 2014, an assessment bilateral agreement under the EPBC Act between the South Australian and Australian Governments came into operation. The agreement provides for a single environmental assessment process under the Australian Government's 'One-Stop-Shop' to meet the regulatory requirements of both South Australia and the Commonwealth. It covers environmental assessment of proposed developments in South Australia that could impact on a matter of National Environmental Significance (NES).

In the case of the *Mining Act 1971*, the accredited processes are mining lease proposals, retention leases, miscellaneous purpose licenses and exploration PEPRs. In relation to the *Petroleum and Geothermal Energy Act 2000*, the accredited process is the EIR and SEO.

Under this agreement, the Australian Government still determines if a proposed action is a 'controlled action' and will retain the power to approve or refuse actions where they relate to a matter of NES, and to attach conditions to approved actions.

Where the Australian Government requires a proponent to undertake specific mitigation methods to reduce significant impacts as a condition of approval under the EPBC Act, those mitigation methods will be taken into consideration when determining SEB requirements under the Act.

4. Assessment process

The following steps summarise the process, as set out in the Clearance Guide, SEB Policy and SEB Guide, for determining the required SEB for clearance of native vegetation associated with the mining and petroleum industry. Where indicated, further information on the assessment processes can be found in the Clearance Guide, SEB Guide and SEB Policy.

Step 1 - Provide information on fauna & flora within the area of development

The NVC's Clearance Guide describes matters that should be addressed regarding proposed clearance of native vegetation. At a minimum this includes describing the native vegetation extent and condition, a description of the vegetation communities and the presence of rare or threatened species or habitat for rare or threatened species.

The main objective of the Guide is to ensure the information provided and the level of oversight and obligations imposed are proportionate to the likely impact of a clearance activity.

The information required as described in the Clearance Guide must be provided in a Native Vegetation Data Report prepared by an NVC Accredited Consultant. The Department of Environment, Water and Natural Resources (DEWNR) maintains a list of Accredited Consultants on its website - <http://www.environment.sa.gov.au/managing-natural-resources/native-vegetation/accredited-consultants>.

Step 2 - Minimise the impacts on native vegetation

The Regulations state that all clearance activities must minimise impacts on native vegetation as much as is practically possible. In particular, proponents must apply the Mitigation Hierarchy (see below). SEB options should only be considered after all reasonable measures have been taken to avoid and minimise negative impacts (either direct or indirect) of proposed activities on biodiversity (see the Clearance Guide for further details). All avoidance and minimisation measures should be clearly documented. The Mitigation Hierarchy is applied in the following order:

- Avoid — measures should be taken to avoid clearance of native vegetation wherever possible
- Minimise — if clearance of native vegetation cannot be avoided, measures should be taken to minimise the extent, duration and intensity of impacts of the clearance on biological diversity to the fullest possible extent (whether the impact is direct, indirect or cumulative)
- Rehabilitate or restore — measures should be taken to rehabilitate ecosystems that have been degraded, and to restore ecosystems that have been destroyed by impacts of clearance of native vegetation that cannot be avoided or further minimised
- Offset — any adverse impact on native vegetation or ecosystems that cannot be avoided or further minimised should be offset by the achievement of an SEB that outweighs that impact.

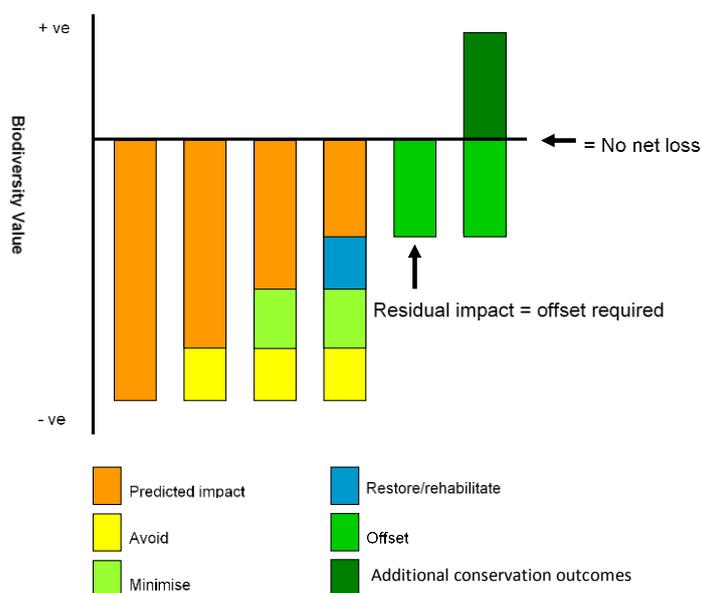


Figure 1 Steps in the Mitigation Hierarchy - avoid, minimise, rehabilitate/restore, offset.

Step 3 - Assess the residual impacts

Once the impacts have been avoided and minimised, an assessment of the residual impacts of the proposed development must occur. There are three NVC endorsed vegetation assessment methods that are applied to provide the vegetation with a relative biodiversity score. This score is based on elements such as the condition/health of the vegetation, its landscape context (its importance within the local region) and its conservation values (the presence of rare or threatened species or communities).

The vegetation assessment methods include the following and are applied according to Figure 2:

- [Bushland Assessment Method](#)
- [Rangeland Assessment Method](#)
- [Scattered Tree Assessment Method](#)

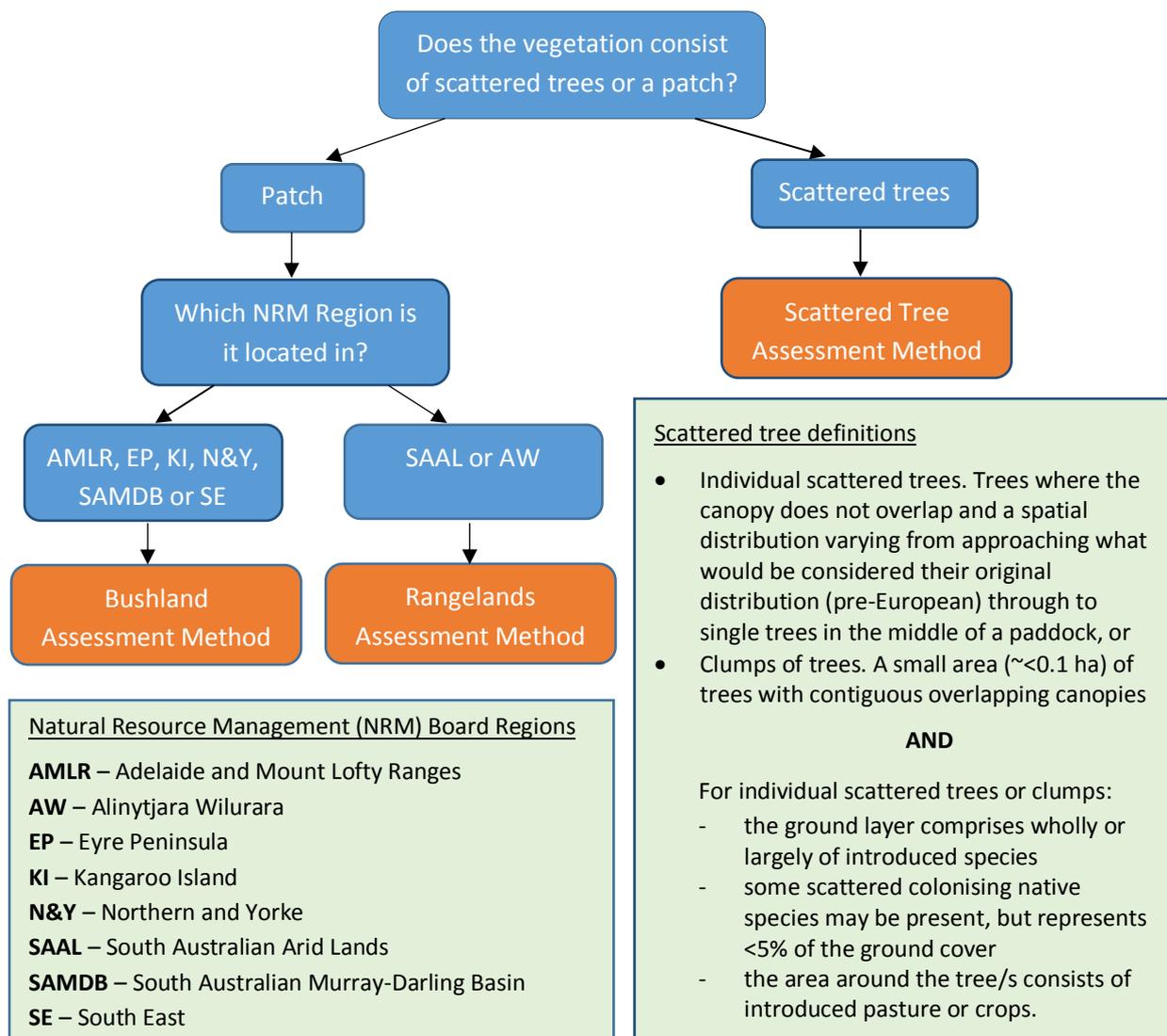


Figure 2. Native Vegetation Council assessment methods.

Step 4 - Calculate the SEB required

The required SEB is determined from the assessment of the likely residual impact at the site of development. This must be determined in accordance with the NVC's [SEB Guide](#), which considers the loss of biodiversity at the site of impact based on the following matters (see the SEB Guide for further details):

- The biodiversity value of the vegetation being impacted. This is based on vegetation assessments to determine a Biodiversity Score
- The degree of impact. This is based on whether all of the vegetation will be removed or only partially impacted (e.g. tree trimming as opposed to complete removal)
- Whether the clearance is within a protected area (e.g. National Park, Conservation Park or a Heritage Agreement area)
- Whether the site of impact will be subject to active ecological restoration after disturbance has ceased.

This assessment will determine the 'SEB Points of Loss' which represents the impact on biodiversity from the mining activity. This is increased by 5% to determine the 'SEB points of Gain' that need to be achieved elsewhere to provide a net environmental benefit.

Step 5 - Identify the means of providing the SEB

Different options are available for achieving an SEB, including providing an on ground SEB or making a payment in the Fund (SEB Payment). This needs to be included in the relevant document for approval, such as the PEPR or SEO.

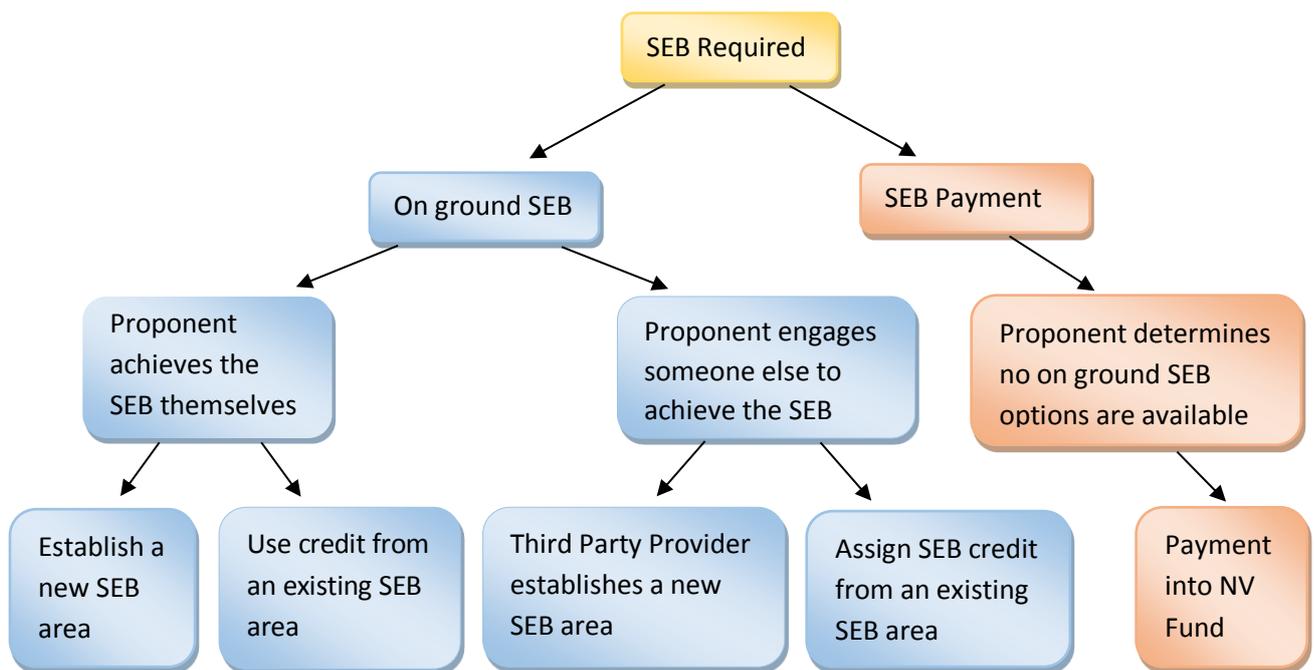


Figure 3. SEB options – on ground (blue) and payment (orange).

On ground SEB

An on ground SEB involves establishing, managing or protecting an area of native vegetation for conservation. The area of land used to achieve an SEB is referred to as an 'SEB Area'.

An on ground SEB must meet the requirements set out in the SEB Policy and summarised here:

- *Like for like or better* – the vegetation within the proposed SEB Area must contain the same vegetation community/type as that proposed to be cleared (like for like). The exception to this is where a proposed SEB area contains vegetation of a higher conservation value than the area of impact (like for like or better).
- *Location* – the SEB Area must be located, relative to the site of impact, in the same geographical area in the following order of preference: Interim Biogeographic Regionalisation for Australia (IBRA) Association; IBRA Subregion; IBRA Region.
- *Area of land* – the SEB must be an area of land manage to directly improve the condition, protection and/or extent of native vegetation
- *Additional to existing obligations* – areas of vegetation that are already protected and managed for conservation purposes will generally not be considered suitable as SEB Areas.
- *Protected in perpetuity* – the SEB Area must be conserved in perpetuity for the protection of native vegetation and must not be used in a way that is inconsistent with that dedication. This may require the establishment of a Heritage Agreement or Management Agreement under the Act.
- *Managed in accordance with an Native Vegetation Management Plan* – the management plan will stipulate the management actions that must be undertaken over the initial ten years from the establishment of the SEB Area, plus on-going monitoring and maintenance activities. Actions will involve, as a minimum: stock exclusion; weed and pest control; revegetation (where required); no removal, introduction or disturbance of any soil, rocks, or other material, and; no establishment of any structure, building or dwellings.
- *Minimum requirement* – the SEB Area must be of a minimum size (three hectares for a common vegetation community and one hectare for a listed community under the EPBC Act), dimension (greater than 30m wide for 90% of its length) and unlikely to be negatively impacted by future activities.

Note: the establishment of on ground SEB areas within a Mining Lease is generally not supported. These areas are often needed for, or impacted by, continued or future mining operations and are therefore generally not suitable as an SEB.

If a proponent chooses to provide an on ground SEB, it may be delivered through one of the following means:

1. *Provide a new SEB Area*: Proponents may establish a new SEB Area on land they own, or which is under their care and control. The area must be managed in accordance with a Native Vegetation Management Plan (NVMP) to describe how the SEB will be achieved. The NVMP must be included in the PEPR for mining related activities.
2. *Apply to use SEB Credit*: Proponents may apply to use SEB Credit that they have previously established. SEB Credit is achieved by establishing an SEB Area that is either greater than required as a condition of a clearance consent, or that is not required in relation to a clearance consent.
3. *Apply to have SEB Credit assigned from another person or body*: Proponents may apply to use SEB Credit from an existing SEB Area that is owned by another person or body.
4. *Engage an Accredited Third Party Provider*: A proponent may engage an Accredited Third Party Provider to achieve the SEB obligations on their behalf by establishing a new SEB Area.

SEB payment

An SEB payment involves making a payment into the NVC administer Native Vegetation Fund. Money paid into the Fund will be used by the NVC to establish, regenerate, preserve and maintain native vegetation elsewhere. Projects can be viewed on DEWNR's [website](#).

Step 6 - Assess the proposed SEB area or calculate the SEB payment

On ground SEB

If an on ground SEB is proposed, a vegetation assessment must occur in the proposed SEB Area in accordance with Figure 2 (excluding the Scattered Tree Assessment Method).

The assessment of the proposed SEB Area will determine the likely environmental gain that will be achieved from protecting and managing that area of vegetation for conservation (see the SEB Guide for further details). In particular, this will include consideration for the likely loss of vegetation extent and condition in the absence of protection and maintenance (averted loss). This is then compared to the improvement expected from actively managing the vegetation through the establishment of the SEB (management gain).

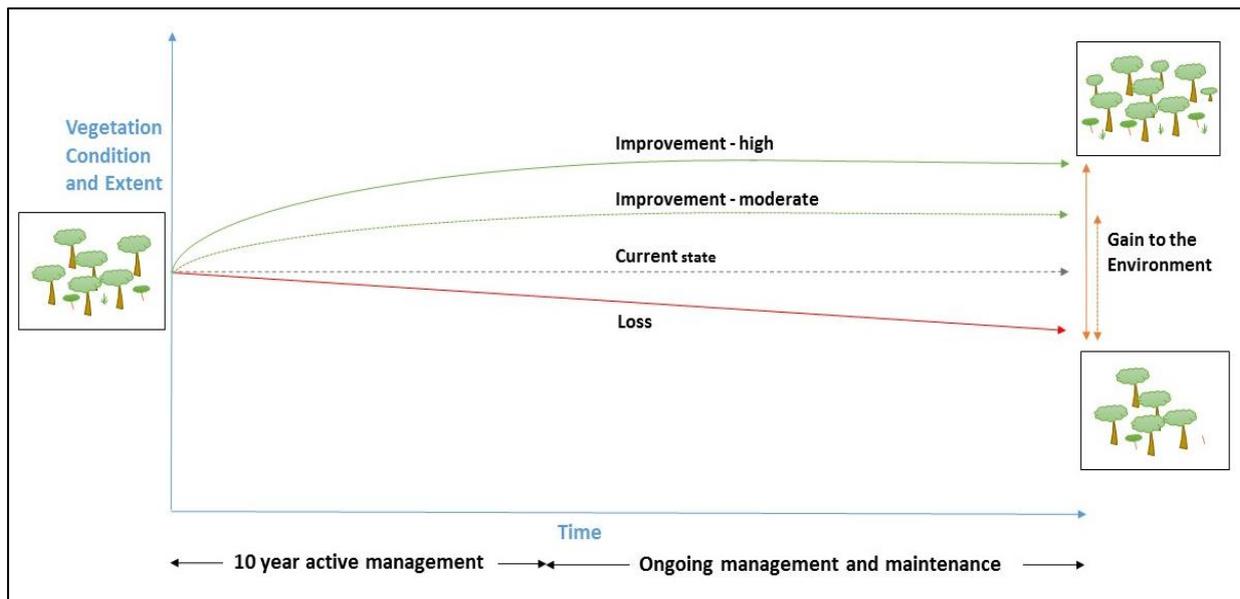


Figure 4. Representation of the biodiversity gain calculation. This indicates the various components that determine the level of biodiversity benefit that is likely to be achieved at a proposed SEB Area. This includes the Protection Gain (averted loss) and Management Gain (predicted improvement).

The assessment of the proposed SEB Area will determine the 'SEB Points Provided'. For the clearance to be offset, the SEB Points Provided must be equal to or greater than the 'SEB Points Required' from the impact area.

SEB payment

If an SEB payment is proposed, the payment formula must be applied to determine the amount of money that needs to be paid into the Fund (see the SEB Guide for full details). The NVC uses this money to achieve the required SEB on behalf of the clearance proponent.

Step 7 - Determine if actions are required to offset impacts on rare or threatened species

If a proposed clearance of native vegetation will impact on a flora or fauna species that is listed under either the *National Parks and Wildlife Act 1972* (NP&W Act) or the EPBC Act, additional actions may need to be undertaken in order to offset the impacts on that particular species. This is set out in the SEB Guide.

5. How mining activities are affected

Exploration activities

Minerals

1. The proponent must have approval from DPC to undertake exploratory activities and clearance must be incidental to that activity.
2. The clearance must be able to be undertaken in accordance with an approved exploration PEPR that meets the required Industry Standards to ensure that there will be minimal impacts on native vegetation. The following procedure and Ministerial Determination outline the minimum requirements for the preparation of a PEPR:
 - a. MD001 Generic program for environmental protection and rehabilitation - low impact in South Australia - <https://sarigbasis.pir.sa.gov.au/WebtopEw/ws/samref/sarig1/image/DDD/MD001.pdf>
 - b. MD013 PEPR Determination - <https://sarigbasis.pir.sa.gov.au/WebtopEw/ws/samref/sarig1/image/DDD/MD013.pdf>

The following additional guidelines may also assist explorers:

- c. M33 Statement of environmental objectives and guidelines for mineral exploration activities - <https://sarigbasis.pir.sa.gov.au/WebtopEw/ws/samref/sarig1/image/DDD/ISM33.pdf>
 - d. MG22 Guidelines for conducting mineral exploration in South Australia - <https://sarigbasis.pir.sa.gov.au/WebtopEw/ws/samref/sarig1/image/DDD/MRGMG22.pdf>
3. If clearance cannot be undertaken in accordance with the Industry standards and there will be a significant impact on native vegetation, then an SEB is required.

Petroleum and geothermal

For petroleum and geothermal exploration and associated activities under the *Petroleum and Geothermal Energy Act 2000*, all wells (and associated infrastructure) drilled and immediately decommissioned and rehabilitated within 12 months of clearance will be considered 'exploration' and exempt from SEB requirements (subject to meeting the required Industry Standards through a relevant SEO). Wells that are not rehabilitated within 12 months or progress to production will be considered a 'mining operation' and the well site and all new associated access roads will become liable for SEB.

Seismic activities and other low impact exploration activities (e.g. geochemical surveys) will be considered exploration. The relevant SEO will be considered by the NVC as the 'accepted industry environmental management practices' for facilitating the regrowth of native vegetation.

Mining operations (other than private mines)

1. The proponent must make an application to DPC (as delegate of NVC) for approval:
 - a. under a Mining Act, as part of the lease application for new mining operations or as part of a review of a PEPR for existing mines. That application must include a Native Vegetation Data Report detailing the proposed clearance, corresponding SEB and either a Native Vegetation Management Plan (NVMP), Third Party or SEB Credit arrangement, or payment amount for achieving the SEB. The SEB must be approved before clearance can proceed.
 - b. under the *Petroleum and Geothermal Energy Act 2000*, as part of the SEO. The SEO must detail the reporting requirements to DPC relating to native vegetation clearance and the general means by which an SEB will be achieved. The proponent must report annually on the clearance undertaken, the associated SEB obligations and how the SEB will be achieved. This will involve providing either an NVMP, Third Party or SEB Credit arrangement, or payment amount for achieving the SEB.
2. DPC must have granted approval and the proponent must provide the required SEB.

Private mining operations

This exemption applies if the private mine has been continuously operating since 21st November 1984. Continuously operating means there has not been a cessation of mining longer than a single twelve-month period.

Under this exemption, the clearance of native vegetation does not require a SEB.

Mining operations approved before 2003

Existing mining operations, with mining plans approved prior to **25 August 2003**, are not subject to SEB requirements, provided any clearance occurs within the framework of the existing approved plan. If a mining plan that was approved prior to August 2003 is later amended and results in a requirement to clear additional native vegetation, then only that additional area will be subject to SEB requirements.

New mining plans approved by DPC after 25 August 2003 that involve the clearance of native vegetation will be required to meet SEB requirements.

Similarly, for petroleum and geothermal activities, where clearance has occurred in accordance with an SEO approved prior to the 25 August 2003 no SEB will be required. The extent to which an SEB is attached to SEOs approved from 25 August 2003 will be reviewed in consultation with the NVC.

6. Process for seeking approval

To seek approval to clear native vegetation under the *Native Vegetation Regulations 2017*, a proponent should submit the Native Vegetation Data Report and corresponding SEB proposal to DPC for assessment and approval, as part of the PEPR under the *Mining Act 1971* or via the annual reporting process as part of an approved SEO under the *Petroleum and Geothermal Energy Act 2000*.

Appeals process

If a proponent has any concerns regarding a decision of DPC acting as an NVC delegate, particularly relating to matters described in this Guide, the proponent may seek to make a representation to the NVC to review the decision.

The proponent's responsibilities

It is always the responsibility of the proponent to comply with any relevant legislation. Proponents must understand the requirements of the legislation and seek their own advice on the applicability of any legislation to their circumstances.

For example, with respect to exploration, a proponent will need to make an informed assessment as to:

- whether or not the land to be explored supports native vegetation
- the extent and nature of any such vegetation
- whether or not the proposed activities will involve 'clearance' of native vegetation
- the extent of proposed clearance of that vegetation, and whether clearance can be reasonably reduced or avoided or is subject to other exemptions under the Act.

As discussed below, proponents who wish to use the exemptions for exploration and/or mining will need to follow NVC/DPC approval processes, which may incur costs to the applicant.

Situations where native vegetation clearance may not be approved

Situations may occur where native vegetation is considered to be of such high value that provision of a sufficient SEB to compensate for clearance cannot be achieved (e.g. last known remaining stand of critically endangered species or habitat). In such situations, approval to clear that vegetation may be refused under the *Mining Act 1971* or *Petroleum and Geothermal Energy Act 2000*, or a determination could be made by the NVC that the SEB cannot be realistically set at a level that would make clearance acceptable, reflecting the value of that vegetation.

7. Monitoring and evaluation

As the delegate of the NVC, DPC reports to the NVC annually on the areas approved for clearance and the areas, payments and Third Party/SEB Credit arrangements of approved SEB offsets. This includes spatial information detailing the specific locations of the areas affected (both clearance and SEB areas). DPC will also monitor and analyse the progress of SEB offsets to provide advice and ensure compliance with conditions of clearance and ensure that a biodiversity benefit is achieved.

Proponents are required, when providing an on ground SEB, to provide detailed monitoring reports on an annual basis and the reports include the following:

- Operation activities – the amount of land disturbed, measures implemented to avoid or control environmental impacts, and revegetation or rehabilitation conducted. This should include information on the level of success of any rehabilitation, reasons for and actions taken to address any failures or substandard outcomes, and further actions to be taken in the following year.
- SEB activities – actions taken to manage the SEB area, level of success achieved, reasons for and actions taken to address any failures or substandard outcomes, and further actions to be taken in the following year. The monitoring should involve photopoint monitoring and repeat vegetation assessments to quantify outcomes. The SEB Policy provides guidance on SEB Area monitoring and compliance obligations.

Appendix 1. Definitions

Clearance

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, and
- (e) any other substantial damage to native vegetation, including 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.

Clearance also includes the following;

Clearance of intentionally revegetated land

In some circumstances, operators may need to re-clear land that has previously been intentionally revegetated with native vegetation, for example, as part of a lease condition. An SEB will not be required for the clearance of that vegetation as long as it has not been planted as a condition of consent to clearance granted under the *Native Vegetation Act 1991*, or as an order of a court under the *Native Vegetation Act 1991*.

Clearance of vegetation for rehabilitation purposes

If an operator requires the clearance of vegetation to undertake rehabilitation activities, for example, clearing native vegetation as part of the process to batter down a quarry face, the clearance needs approval and will be subject to SEB requirement for the removal of that vegetation as that clearance is part of the overall operations.

Clearance of natural regrowth native vegetation

If an operator requires the clearance of native vegetation that has naturally re-established after clearance or grazing activities, approval is required and will be subject to SEB requirements.

Ecological restoration

Ecological restoration means the return of an ecosystem to an approximation of its natural or pre-disturbance condition. The goal is to emulate a natural, functioning, self-regulating system that is integrated with the ecological landscape in which it occurs. It may involve the manipulation of natural processes of ecological succession to create a dynamic self-sustaining indigenous ecosystem. The restored ecosystem should simulate the natural condition, or some other native ecosystem appropriate for the new conditions of the landscape. It must be stable with a minimum of human input after the initial efforts. Ecological restoration should broadly be undertaken in accordance with the *'Habitat Restoration Planning Guide for Natural Resource Managers'* (DEWNR 2010).

The restoration of the impact site does not constitute an SEB itself, nor does it change how or when an SEB needs to be provided. This must still occur as specified by the SEB Policy.

Mitigation Hierarchy

The Mitigation Hierarchy is as follows:

- (a) avoidance—measures must be taken to avoid clearance of native vegetation
- (b) minimisation—if clearance of native vegetation cannot be avoided, measures should be taken to minimise the duration, intensity and extent of impacts of the clearance on biological diversity to the fullest possible extent (whether the impact is direct, indirect or cumulative)

(c) rehabilitation or restoration—measures should be taken to rehabilitate ecosystems that have been degraded, and to restore ecosystems that have been destroyed, by impacts of clearance of native vegetation that cannot be avoided or further minimised

(d) offset—any adverse impact on native vegetation or ecosystems that cannot be avoided or minimised must be offset by the achievement of a significant environmental benefit that outweighs that impact.

Native vegetation

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 (any water that is subject to the ebb and flow of the tide) but does not include:

- (1) a plant or part of a plant that is dead unless the plant, or part of the plant, is of a class declared by the *Native Vegetation Regulations 2017*, e.g. nest trees for species such as the southeastern form of the Red-tailed Black Cockatoo in the Naracoorte–Penola region of the state
- (2) a plant intentionally sown or planted by a person unless:
 - (a) the revegetation was in compliance with a condition of a clearance consent issued by the NVC, or
 - (b) the revegetation was in compliance with a requirement under the *Native Vegetation Act 1991* or order issued by the courts following an illegal clearance, or
 - (c) the revegetation that has, upon application to the NVC, been recognised as native vegetation.

Note: Vegetation that might sometimes appear to be weeds may be classed as native vegetation. For example, some grasses and herbaceous plants might have the appearance of being weeds, but in fact are native species.

Rehabilitation

Rehabilitation is the process of returning the land in an area to some degree of its former state, after a process has resulted in its damage. Rehabilitation does not necessarily re-establish the pre-disturbance vegetation communities but does seek to prevent the establishment of pest species whilst providing a geologically and hydrologically stable site. This may involve reshaping, spreading topsoil, constructing banks or revegetation. Ecological restoration differs from rehabilitation in that restoration is a holistic process not achieved through the isolated manipulation of individual elements. While restoration aims to return an ecosystem to a former natural condition, rehabilitation generally implies putting the landscape to a new or altered use or to serve a particular human purpose.

Remnant vegetation

Remnant vegetation is the remaining native vegetation in a region, area or catchment where it has been extensively cleared. The less vegetation there is in an area, the more significant the remnant vegetation becomes. Vegetation types that have been extensively cleared are considered significant even if their current condition is degraded.

Substantially intact stratum

A 'stratum' of native vegetation means a layer of a plant community consisting of plants that comprise native vegetation, and that have a similar growth habit. The layers or 'strata' that may be observed in a plant community will depend on the characteristic vegetative form of the plant species, i.e. whether the layer consists of a tree layer, shrub layer or ground cover.

A stratum of native vegetation is considered substantially intact if:

- (1) the stratum has not been seriously degraded by human activity during the immediately preceding period of 20 years, or
- (2) the only serious degradation of the stratum by human activity during that period has been caused by fire.

Wetlands

Wetlands can be broadly defined as areas of land featuring water. They may contain water throughout the year or only during the wet season due to higher rainfall. Wetlands include bodies of water that are static (like a lake or swamp) or flowing (like a river or stream). They might be natural or artificial, and contain fresh or saline water.

Appendix 2. Principles of clearance of native vegetation – Schedule 1, Native Vegetation Act 1991

Native vegetation should not be cleared if, in the opinion of the NVC—

- (a) it comprises a high level of diversity of plant species; or
- (b) it has significance as a habitat for wildlife; or
- (c) it includes plants of a rare, vulnerable or endangered species; or
- (d) the vegetation comprises the whole, or a part, of a plant community that is rare, vulnerable or endangered; or
- (e) it is significant as a remnant of vegetation in an area which has been extensively cleared; or
- (f) it is growing in, or in association with, a wetland environment; or
- (g) it contributes significantly to the amenity of the area in which it is growing or is situated; or
- (h) the clearance of the vegetation is likely to contribute to soil erosion or salinity in an area in which appreciable erosion or salinisation has already occurred or, where such erosion or salinisation has not yet occurred, the clearance of the vegetation is likely to cause appreciable soil erosion or salinity; or
- (i) the clearance of the vegetation is likely to cause deterioration in the quality of surface or underground water; or
- (j) the clearance of the vegetation is likely to cause, or exacerbate, the incidence or intensity of flooding; or
- (k) -
 - i. after clearance the land will be used for a particular purpose; and
 - ii. the regional NRM board for the NRM region where the land is situated has, as part of its NRM plan under the *Natural Resources Management Act 2004*, assessed—
 - (A) the capability and preferred uses of the land; and
 - (B) the condition of the land; and
 - iii. according to that assessment the use of the land for that purpose cannot be sustained; or
- (l) the clearance of the vegetation would cause significant harm to the River Murray within the meaning of the *River Murray Act 2003*; or
- (m) the clearance of vegetation would cause significant harm to the Adelaide Dolphin Sanctuary.

Appendix 3. Relevant sections of the Native Vegetation Regulations 2017

Division 5—Risk assessment

Regulation 12—Risk assessment

- (1) Subject to this Division, native vegetation may be cleared in any of the circumstances set out in Schedule 1 Part 4, Part 5 or Part 6.
- (2) The operation of this regulation extends to native vegetation that is growing or is situated on land that is subject to a heritage agreement or a management agreement if a provision of the relevant Part of Schedule 1 setting out circumstances in which vegetation may be cleared specifies that the provision applies to such vegetation

Regulation 14—Clearance for mining and petroleum activities

- (1) Clearance of native vegetation for the purposes of mining activities or operations of a kind specified in Schedule 1 Part 5 Division 1 is permitted only if it is undertaken in accordance with—
 - (a) a management plan, approved by the NVC for implementation, that results in a significant environmental benefit; and
 - (b) in the case of operations authorised under a Mining Act—a management plan under that Act; and
 - (c) in the case of operations authorised under the Petroleum and Geothermal Energy Act 2000—a statement of environmental objectives under that Act.
- (2) Subregulation (1)(a) does not apply if the person undertaking the activities or operations (or a person acting on the person's behalf) has made a payment into the Fund of an amount considered by the NVC to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) or (6a) of the Act.

Regulation 15—Clearance for exploratory operations

- (1) Clearance of native vegetation for the purposes of exploratory operations of a kind specified in Schedule 1 Part 5 Division 2 is permitted only if it is undertaken in accordance with industry standards developed and endorsed by the NVC for the purposes of this regulation following consultation with the Minister responsible for the administration of the Mining Act 1971 (the mining Minister).
- (2) Industry standards endorsed by the NVC for the purposes of this regulation must—
 - (a) be directed towards ensuring that exploratory operations will have a minimal impact on native vegetation and be conducted in a manner that will allow for immediate regrowth of any native vegetation that is cleared; and
 - (b) adequately address any concerns raised by the mining Minister during consultation.
- (3) However, if there are no applicable industry standards, or if it is not possible for the applicant to undertake the operations in accordance with applicable industry standards, the clearance is permitted if—
 - (a) the clearance is undertaken in accordance with a management plan, approved by the NVC for implementation, that results in a significant environmental benefit; or
 - (b) the person undertaking the operations makes a payment into the Fund of an amount considered by the NVC to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) or (6a) of the Act.

Schedule 1—Prescribed circumstances in which native vegetation may be cleared (section 27(1)(b) of Act)

Part 5—Mining and petroleum activities (regulation 12)

Division 1—Mining operations

28—Operations

- (1) Clearance of vegetation incidental to operations authorised under a Mining Act or the Petroleum and Geothermal Energy Act 2000.
- (2) Subclause (1) applies to vegetation that is growing or is situated on land that is subject to a heritage agreement or a management agreement.

Division 2—Exploratory activity

29—Exploration

- (1) Clearance of vegetation incidental to exploratory operations authorised under a Mining Act or the Petroleum and Geothermal Energy Act 2000.
- (2) Subclause (1) applies to vegetation that is growing or is situated on land that is subject to a heritage agreement or a management agreement.

Division 3—Mining operations approved before 2003

30—Mining operations approved before 2003

Clearance of vegetation incidental to operations authorised before 25 August 2003 under a Mining Act, if the clearance—

- (a) is clearance that is envisaged or authorised by or under a program or approval under the relevant Act; or
- (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.

Division 4—Private mines

31—Mining operations at private mines

- (1) Clearance of vegetation 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.
- (2) Subclause (1) applies to vegetation that is growing or is situated on land that is subject to a Heritage Agreement or a Management Agreement.



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