

Guidelines for a Significant Environmental Benefit for the Clearance of Scattered Trees

Native Vegetation Council Guideline under section 29(4a) of the *Native Vegetation Act 1991* | 30 January 2017

Purpose of this Guideline

The purpose of these Guidelines is to provide guidance for the operation of section 29(4a) of the *Native Vegetation Act 1991* (the Act), in particular the assessment of applications to clear scattered paddock trees where such clearance would be in contravention of section 29(1)(b) of the Act.

In determining any application for the clearance of scattered trees that in the opinion of the Native Vegetation Council (NVC) is seriously at variance with the Principles of Clearance, the NVC will consider the particular exceptional circumstances relevant to that application, including whether the impact associated with the scale, nature and extent of the clearance justify the giving of consent.

Background

The *Native Vegetation Act 1991* provides for the protection, enhancement and management of native vegetation in South Australia.

In 2004 the Act was amended to enable the NVC to consent to native vegetation clearances that are, in the opinion of the NVC, seriously at variance with the Principles of Clearance. This was previously not permitted.

Consent is only permissible in exceptional environmental circumstances where, subject to guidelines, the NVC is satisfied that a significant environmental benefit (SEB) offset will be achieved that outweighs the value of retaining the vegetation, and that those circumstances justify the giving of consent.

The Act provides that an SEB may be achieved by:

- Establishing and managing native vegetation on land (approved by the NVC), or
- Protecting native vegetation growing or situated on land (approved by the NVC), or
- Entering into a heritage agreement with respect to specified native vegetation on land (approved by the NVC and Minister), or
- If none of the above options are possible, making a payment into the Native Vegetation Fund of an amount

considered by the NVC to be sufficient to achieve an SEB in a manner contemplated by the Act.

Operating Principles

1. A decision on whether to approve clearance in accordance with section 29(4a) (see appendix 1), requires the NVC to consider whether:
 - a. The proposed clearance is seriously at variance with the Principles of Clearance provided in the Act (see appendix 2, and Guide for Applications to Clear Native Vegetation under the *Native Vegetation Act 1991* and *Native Vegetation Regulations 2017*)
 - b. The particular circumstances justify the proposed clearance
 - c. The SEB outweighs the value of retaining the vegetation
2. The clearance of significant native vegetation will only be considered pursuant to section 29(4a) if it has been established that there is no practical alternative that would involve no clearance, or the clearance of less native vegetation, or the clearance of native vegetation that is less significant, or the clearance of native vegetation that has been degraded to a greater extent than the native vegetation proposed to be cleared.
3. In making a decision, the NVC must employ the Precautionary Principle, such that where there is uncertainty as to whether the SEB will outweigh the clearance, clearance must not be approved.
4. Decision-making in relation to section 29(4a) should support the highest possible biodiversity outcomes. The NVC will consider the quality, position in the landscape, and need for ongoing management of native vegetation. It will also consider reducing fragmentation of habitat and protecting representatives of different native vegetation communities in each region.
5. Research on the habitat value of scattered trees supports the retention of areas where tree canopy cover exceeds 4% (based upon a 4 ha sample area). The NVC will take this research into account when considering applications. The NVC recognises the need to protect and maintain stands of trees of varying age class likely to be found within these areas of higher canopy cover. Consent for clearance within these areas is therefore less likely.
6. The clearance of habitat for a species listed under *the Environment Protection and Biodiversity Conservation Act 1999* should only be approved in situations where the SEB will provide significant long term benefit for the recovery of the species.
7. The NVC recognises that scattered trees provide critical habitat for some threatened species. In considering applications, including any conditions of consent relating to these species, the NVC will have regard to any recovery plans, publications and expert advice relating to the protection and management of those threatened species.
8. The NVC-endorsed scoring system for scattered trees is used to determine the habitat value of individual trees to meet the requirements of Principle of Clearance 1(b). The score is based on the following principles, with weightings according to their relative contributions to the overall wildlife habitat value of a tree:
 - a. Large trees provide more resources for wildlife;
 - b. Healthy trees live longer and provide more food resources for wildlife;
 - c. Hollows provide shelter and habitat for nesting and roosting wildlife ;
 - d. Trees in clumps or near bushland generally support more wildlife;
 - e. Trees that provide habitat for threatened species are of higher value.
9. The NVC has incorporated a multiplication factor into the scoring of scattered trees to ensure that high value

trees are offset with a high value SEB (see the 'Native Vegetation Council Scattered Tree Assessment Manual 2017' for details).

10. The NVC may impose conditions on consent to clear that are additional to standard SEB requirements (as described in the 'Policy for a Significant Environmental Benefit under the *Native Vegetation Act 1991* and *Native Vegetation Regulations 2017*' and 'Guide for calculating a Significant Environmental Benefit under the *Native Vegetation Act 1991* and *Native Vegetation Regulations 2017*'). Such conditions are imposed in order to compensate for the specific values associated with scattered trees that will be lost as a result of the clearance of the trees. Conditions may include, but are not limited to, relocating tree hollows, establishing artificial hollows, planting scattered trees or protecting and improving areas containing existing scattered trees.
11. Due to the significance of the impact and the difficulty to achieve a sufficient SEB, the NVC will generally not give consent or support clearance in relation to these Guidelines in the following circumstances;
 - a) If clearance is deemed seriously at variance with two or more of the Principles of Clearance under the *Native Vegetation Act 1991*;
 - b) If the clearance will significantly adversely impact a population of a species listed under the *National Parks and Wildlife Act 1972* or the *Environment Protection and Biodiversity Conservation Act 1999*;
 - c) If a tree proposed to be cleared receives a Tree Biodiversity Score of 8.5 or greater; or
 - d) If the proposed clearance involves more than 10 trees and the average score is five (5) or greater for the Tree Biodiversity Score.

For more information

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APPENDIX 1. EXCERPT FROM SECTION 29 OF THE NATIVE VEGETATION ACT

29—Provisions relating to consent

- (1) Subject to this section, in deciding whether to consent to an application to clear native vegetation, the Council—
 - (a) must have regard to the principles of clearance of native vegetation so far as they are relevant to that decision; and
 - (b) must not make a decision that is seriously at variance with those principles.
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- (4a) The Council may give its consent to the clearance of native vegetation that is in contravention of subsection (1)(b) if—
 - (a) the Council has adopted guidelines under section 25 that apply in relation to the region where the native vegetation is situated (being guidelines envisaged under subsection (1)(c) of that section); and
 - (b) the Council is satisfied—
 - (i) that a significant environmental benefit, which outweighs the value of retaining the vegetation, is to be achieved through the imposition of conditions and the taking of other action by the applicant; and

- (ii) that the particular circumstances justify the giving of consent.
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APPENDIX 2: SCHEDULE 1 OF THE NATIVE VEGETATION ACT—

PRINCIPLES OF NATIVE VEGETATION CLEARANCE

1—Principles of clearance of native vegetation

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

- (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.

2—Interpretation

In this Schedule, unless the contrary intention appears—

endangered species means a species of plant for the time being appearing in Part 2 of Schedule 7 of the *National Parks and Wildlife Act 1972*;

plant community means plants of a species indigenous to South Australia growing in association with one another and forming a group that is distinct from other plant communities;

rare species means a species of plant for the time being appearing in Part 2 of Schedule 9 of the *National Parks and Wildlife Act 1972*;

vulnerable species means a species of plant for the time being appearing in Part 2 of Schedule 8 of the *National Parks and Wildlife Act 1972*; **wildlife** has the same meaning as in the *National Parks and Wildlife Act 1972*.

References

Cutten, J. and Hodder, M (2002), *Scattered Tree Clearance Assessment in South Australia: Streamlining, Guidelines for Assessment, and Rural Industry Extension*, Biodiversity Assessments Section, Department for Environment and Heritage, South Australia.

Milne, T., Croft, S. and Pedler, J. (2003 Working Draft 1), *Bushland condition Assessment Monitoring Manual – Section 1: Field Guide to Monitoring*, Nature Conservation Society of SA

Oliver and Parkes, 2003, *A prototype tool kit for scoring the biodiversity benefits of landuse change*, DIPNR (NSW)