Guide for applications to clear native vegetation

Under the *Native Vegetation Act 1991* and
Native Vegetation Regulations 2017

Native Vegetation Council
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Government of South Australia
Department for Environment and Water

Native Vegetation Council

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Acknowledgement of Country

We acknowledge and respect the Traditional Custodians whose ancestral lands we live and work upon and we pay our respects to their Elders past and present.

We acknowledge and respect their deep spiritual connection and the relationship that Aboriginal and Torres Strait Islanders people have to Country.

We also pay our respects to the cultural authority of Aboriginal and Torres Strait Islander people and their nations in South Australia, as well as those across Australia.

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1 Introduction

1.1 Legislative context

The *Native Vegetation Act 1991* (Act)[1] regulates the clearance of native vegetation in South Australia with the intent to achieve the following Objects as described in Section 6 of the Act:

a) the conservation, protection and enhancement of the native vegetation of the State and, in particular, remnant native vegetation, in order to prevent further—
    (1) reduction of biological diversity and degradation of the land and its soil
    (2) loss of quantity and quality of native vegetation in the State
    (3) loss of critical habitat
b) the provision of incentives and assistance to landowners to encourage the commonly held desire of landowners to preserve, enhance and properly manage the native vegetation on their land
c) the limitation of the clearance of native vegetation to clearance in particular circumstances including circumstances in which the clearance will facilitate the management of other native vegetation or will facilitate the sustainable use of land for primary production
d) the encouragement of research into the preservation, enhancement and management of native vegetation
e) the encouragement of the re-establishment of native vegetation in those parts of the State where native vegetation has been cleared or degraded.

The Act also established the Native Vegetation Council (NVC)[2], a 7-member board, which is responsible for administering the Act.

To allow for limited and sustainable clearance of native vegetation, Section 28 of the Act sets out a process for applications for consent to clear native vegetation. Sections 27 and 29 of the Act set out the matters that the NVC must address when considering giving consent to an application. In particular, the NVC:

- must not give consent to clearance of vegetation that contains a substantially intact stratum
- must not, except under certain circumstances, consent to clearance which would be seriously at variance with the Principles of Clearance of the Act
- must ensure, when giving consent, that after allowing for the loss of vegetation to be cleared, there will be a Significant Environmental Benefit (SEB).

The Act also establishes the *Native Vegetation Regulations 2017* (Regulations)[3], which, amongst other things, set out exemptions to the Act. These exemptions allow for clearance of native vegetation in certain circumstances. In

[1] The Act can be found online here: https://www.legislation.sa.gov.au/__legislation/lz/c/a/native%20vegetation%20act%201991/current/1991.16.auth.pdf

[2] More information about the NVC is on the DEW website: https://www.environment.sa.gov.au/about-us/boards-and-committees/native-vegetation-council

[3] The Regulations can be found online here: https://www.legislation.sa.gov.au/__legislation/lz/c/r/native%20vegetation%20regulations%202017/current/2017.15.auth.pdf

particular, the circumstances in Division 5 of the Regulations permit the clearance of native vegetation subject to the establishment of a SEB.

1.2 Purpose of guide

This guide sets out the matters to be addressed when applying to undertake clearance of native vegetation in South Australia under the Act (Section 28) or the Regulations (Division 5) or when submitting a Data Report associated with a development application under the *Planning, Development and Infrastructure Act* 2016 (PDI Act). It also establishes the matters the NVC considers when assessing an application to clear native vegetation under the Act or Regulations or assessing a referral under the PDI Act, and the process that is followed.

2 Application to clear native vegetation

2.1 Information required

If someone wishes to clear native vegetation under either Section 28 of the Act or Division 5 of the Regulations, they must apply to the NVC and provide certain information. In particular, an application must be accompanied with a Data Report prepared by an Accredited Consultant (with the exception of Level 1 clearances under Division 5 of the Regulations in certain circumstances – see Section 3 for details). Equally, if an applicant is submitting a development application under the PDI Act that will involve clearance of native vegetation, the application must be accompanied by a Data Report prepared by an Accredited Consultant.

An Accredited Consultant is a person or body approved by the NVC (in accordance with Section 28(5) of the Act and Native Vegetation Regulation 18(2)(a)) as able to prepare a Data Report. The Data Report is report prepared in the approved form in accordance with Section 28(3)(ii)(A) of the Act and Native Vegetation Regulation 18(2)(a).

The Data Report must provide essential information that the NVC will use to assess the proposed clearance and SEB against the requirement of the Act or the Regulations.

2.2 Assessment process

Once an application is submitted, the following steps are followed:

1. The Native Vegetation Unit (NVU) of the Department of Environment and Water (DEW) checks the Data Report for data quality and completeness, and may also be subject to a site inspection to verify the information. A failure to complete the Data Report adequately may result in delays in processing an application.
2. An Assessment Officer from the NVU prepares an Assessment Report based on information supplied in Data Reports and considering the clearance against the requirements of the Act or the Regulations. The Assessment Report will include recommendations regarding whether consent should be granted and what conditions should be imposed, if any.
3. The Assessment Report is supplied to the applicant and then submitted to the NVC[4] for a decision on whether to approve the clearance.

Section 2.3 outlines the information an Accredited Consultant must collect, record and present in Data Reports for applications under the Act or the Regulations.

2.3 Field inspection

To prepare a Data Report, an Accredited Consultant is required to inspect the site to collect information. The following matters in the following sections must be addressed, in consultation with the applicant, as part of the field work.

[4] Reference to NVC also includes reference to its delegates.

2.3.1 Desktop inspection

Prior to conducting the field inspection, review available information regarding the site of development, including the likely extent of native vegetation cover, and the vegetation communities and threatened species that may be present. This will provide information on matters that should be verified in the field.

Sources of information include but are not limited to a search of the Biological Databases of SA (BDBSA) and the *Environment Protection and Biodiversity Conservation Act* 1999 (EPBC Act) Protected Matters Search or viewing NatureMaps and the Atlas of Living Australia.

2.3.2 General field survey

Survey for and clearly identify all areas of native vegetation contained within the project/development area. This should include vegetation within the property or immediate vicinity of the development. This will allow the NVC to determine if the proposed location of clearance is the most appropriate.

Examine any alternatives that may reduce the amount of clearing or minimise the impact from the development (e.g. through avoidance or minimisation).

Identify any potential on ground SEB areas.

2.3.3 Vegetation assessment

Undertake a vegetation assessment of both the proposed clearance area and any proposed on-ground SEB areas using NVC-approved vegetation assessment methodologies. Assessment is to be undertaken in accordance with the current *Guide to Calculating a Significant Environmental Benefit under the Native Vegetation Act 1991 and the Native Vegetation Regulations 2017* (2026) (SEB Guide)[5]. NVC-approved methods include the Bushland Assessment Method, Rangeland Assessment Method or Scattered Tree Assessment Method.

Assessment should be undertaken at a suitable time of year to ensure species are detectable (e.g. annual herbs) and identifiable (e.g. grasses). This is particularly important for sites where annuals or grasses may include rare or threatened species or where they constitute a reasonable proportion of the species diversity of a site (e.g. grassy woodlands).

2.3.4 Fauna assessment

Undertake a fauna assessment to determine the presence of native fauna or suitable habitat (the survey should be undertaken in accordance with the requirements in Section 3 Risk Assessment).

2.4 General clearance information

Once adequate information has been collected in the field, the Data Report must be prepared. The essential information in the following sections must be addressed.

2.4.1 Property and application details

- **Applicant** information (Property owner and agent)
- **Property** details (section/hundred, allotment/plan)
- **Background** information relating to the proposed clearance (the reason for clearance, why the location has been selected, what the development encompasses)

[5] Current SEB Policy and Guides can be found on the DEW website: https://www.environment.sa.gov.au/topics/native-vegetation/protecting-native-vegetation/significant-environmental-benefits-offsets

- **Past decisions** on clearance applications relating to the property or applicant
- **Future** clearances or development proposed for the site
- **Description of the vegetation** under application (summary of the information collected through the vegetation assessments including vegetation associations and dominant species, significant weeds, threatened species and general description of the condition)
- **Description of the native fauna** species that may be impacted as a result of the clearance, particularly rare or threatened species
- **Approvals** required or obtained under the following legislation:
    - *Planning, Development and Infrastructure Act 2016*
    - *Landscapes SA Act 2019*
    - *National Parks and Wildlife Act 1972 (NP&W Act)*
    - *Pastoral Land Management and Conservation Act 1989*
    - *Environment Protection and Biodiversity Conservation Act 1999*
    - *Water Resources Act 1997*
- **Spatial information** displayed on a map which includes, at a minimum: aerial imagery, cadastral boundaries, Landscape Region boundaries, roads and the proposed area of impact. The map should be presented at multiple scales including:
    - Site map(s) (recommended scale 1:10 000 or lower) showing the boundary of the area of impact. The map(s) should include the location of individual scattered trees (if applicable) and patches of vegetation proposed to be cleared
    - Location map (recommended scale 1:50 000 or higher) showing landscape features, site boundary and any other relevant details, such as local government boundaries and township locations, appropriate at this scale
- Representative **photographs** of the areas/trees proposed to be impacted. Photograph locations should be referenced to GPS waypoints (AMG reference) and recorded on the map.

2.5 Addressing the legislation

The following sections describe the key matters under the Act or the Regulations that will be considered by the NVC in relation to clearance of native vegetation, and must be addressed in the Data Report.

2.5.1 Clearance application under section 28 of the Act

When making a decision on a clearance application under Section 28 of the Act, the NVC will consider the clearance against the presence of substantially intact vegetation and the Principles of Clearance.

Presence of substantially intact vegetation (Section 3A)

The Data Report must contain information on and a recommendation in relation to whether any or all of the area of proposed impact could be considered to contain a stratum of vegetation that is substantially intact. The definition of substantially intact is set out below.

Substantially intact vegetation

1. A stratum of native vegetation will be taken for the purposes of this Act to be substantially intact if, in the opinion of the NVC—
    a. the stratum has not been seriously degraded by human activity during the immediately preceding period of 20 years; or

b. the only serious degradation of the stratum by human activity during that period has been caused by fire.

2. In this section—

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.

Further information on determining the presence of intact vegetation is in Section 5 'Assessing against Intact Stratum'.

If the vegetation is considered to contain a substantially intact stratum, the NVC cannot approve its clearance (Section 27(2)) unless the clearance is for the purpose of harvesting native vegetation (Section 27(3)).

Principles of Clearance (Schedule 1 of the Act)

Data Reports must provide information on and a recommendation ('Not at variance', 'At variance' or 'Seriously at variance') for each of the following principles (the information required and how to assess against the principles are described in Section 4 'Assessing against the Principles of Clearance'):

a) It comprises a high level of diversity of plant species (patches of vegetation only)
b) It has significance as a habitat for wildlife
c) It includes plants of a rare, vulnerable or endangered species
d) The vegetation comprises the whole, or a part, of a plant community that is rare, vulnerable or endangered (patches of vegetation only)
e) It is significant as a remnant of vegetation in an area which has been extensively cleared
f) It is growing in, or in association with, a wetland environment
g) It contributes significantly to the amenity of the area in which it is growing or is situated.

The remaining principles (h, i, j, k, l and m – see Section 4 for details) will be considered by the NVC in relation to comments provided by the local Landscapes SA Board or relevant Minister. However, the Data Report should contain additional information on these principles where relevant and where sufficient information or expertise is available.

If the clearance is seriously at variance with one or more of the principles, the Act states that it should not be cleared. However, the Act provides the NVC with a degree of discretion in certain situations. In particular, the Act provides options under Section 29(4), 29(4a) and 29(4b) to allow the clearance that is deemed to be seriously at variance with the Act (see Section 7 'Clearance of Vegetation Seriously at Variance with the Principles of the Act' for specific details).

Avoid and minimise the impact

Prior to considering an offset, the Data Report needs to provide details of the steps that have been taken to avoid and minimise the clearance of native vegetation as much as practically possible.

Further information is available in Section 6 'Assessing Against the Mitigation Hierarchy'.

Risk Assessment

The Data Report must identify the level of risk the proposed clearance presents to biological conservation (level 1, 2, 3 or 4) as determined in accordance with Section 3. This information is used in determining the level of assessment required, particularly relating to the fauna assessment, and the process that is followed.

2.5.2 Application under Division 5 of the Regulations

Division 5 of the Regulations allows for the clearance of native vegetation in relation to specific activities as set out in Schedule 1, Parts 4, 5 or 6 of the Regulations. However, under Regulation 19, when exercising a power or making a decision, the NVC must;

a. apply the mitigation hierarchy
b. consider, and aim to minimise, potential impacts on biological diversity arising from any proposed clearance of native vegetation
c. consider, and aim to minimise, potential impacts on soil, water and other natural resources arising from any proposed clearance of native vegetation
d. take into consideration comments from agencies or bodies provided in response to any request for comment made by the NVC
e. consider, and aim to minimise, impacts on—
    i. species or ecological communities listed as threatened under the *Environment Protection and Biodiversity Conservation Act 1999*
    ii. species listed as rare or threatened under the *National Parks and Wildlife Act 1972*
f. consider the potential cumulative impact, both direct and indirect, that is reasonably likely to result from a proposed clearance activity.

In relation to Regulation 16—Clearance for other activities, the NVC must assess and have regard to the level of risk to biological diversity conservation presented by the clearance proposal.

Accordingly, for clearance under Division 5 of the Regulations, the Data Report must include information on the following matters:

Demonstrate that the clearance meets the requirements of the Regulation

1. Identify the activity under Schedule 1 Part 4, 5 or 6 in the Regulation for which approval is being sought.
2. Provide information that demonstrates that the proposed clearance meets all the parts specified under that activity (e.g. development authorisation).
3. Provide any other information that demonstrates that the clearance complies with relevant NVC guidelines related to that activity.

Identify the area of impact

The Data Report must clearly define and account for all the clearance that can reasonably be expected to occur or be required for the development, including:

- **Direct impacts** – areas of vegetation that needs to be removed to facilitate the development.
- **Indirect impacts** – areas of vegetation that may be impacted either immediately or in the near future (within the next 10 years) as a result of the development. This may be as a result of, amongst other things, movement of dust, herbicide impacts, weed invasion, altered hydrology (raised or lowered water table, flooding, reduced water supply), fire mitigation management, safety management, infrastructure maintenance or any other matter that may inhibit the growth of native vegetation or result in the degradation or death of native vegetation.
- **Cumulative impacts** – impacts resulting from the incremental impact of past, present and future activities.

When determining the full extent of native vegetation clearances for a proposed development, any impacts associated with the following activities, must be considered as a minimum:

- The footprint of any building, dwelling or other structure or infrastructure.
- Any vegetation within 20 metres of a dwelling.
- Any vegetation within 10 metres from a building.
- Clearance required for vehicle access – generally a 5metre clearance envelope.
- Clearance required for ancillary structures such as tanks.
- Clearance required for new fences – allow 5 metre clearance envelope for internal tracks, 10 metres for property boundaries (except where the property boundary is adjacent a road reserve, then apply 5 metres into the property and 1 metre into the road reserve).
- Clearance required for septic (including irrigation areas) or wastewater systems – septic and wastewater systems may not have a direct impact on native vegetation, however the discharge of additional water and nutrients into areas of native vegetation (including the root zone of trees) can result in the decline in the health of vegetation over time. These impacts must be considered and addressed.
- Any clearance required for connection to services, including power, water, telecommunications, storm water, gas or sewer.
- Any clearance required for electricity connection, including any clearance that is permitted by the *Electricity (Principles of Clearance) Regulation 2021*.
- Any clearance required by the SA Country Fire Service such as fuel reduced zones around houses and building, but also any clearance for fire mitigation measures such as fire breaks, fire access tracks and turn around points.
- Any altered hydrology (raised or lowered water table, flooding, impounding water or reduced water supply) that will impact of the condition or health of native vegetation.
- Clearance for access of construction machinery or material access.
- Any possible impacts from dust generation, including smothering of vegetation.
- Any potential impacts on the root zone of vegetation, such as adding fill to adjust ground level, compaction of soils, severing of roots through trenching for infrastructure, and the construction of hard surfaces which may reduce the infiltration of water.
- Any vegetation that will be significantly reduced in size and isolated from other vegetation such that it will compromise its long-term ecological function and viability.

Note: assume the whole of the site will be cleared of vegetation for any dwellings on a residential allotment(s) of less than 2000 m^2, or residential subdivisions where the allotments are less than 2000 m^2.

The Regulations permit the clearance of native vegetation for activities such as new fences, vehicle access tracks or fire management activities without the approval of the NVC.

The Regulations specifically prevents the clearance of vegetation for fences, vehicle tracks, new buildings and dwellings, or within 10 m of a building, if the clearance is associated with a subdivision of land. All such clearance must be considered and approved as part of the application in relation to Clause 35--Residential subdivision.

Address the Mitigation Hierarchy

The Data Report must clearly demonstrate the measures taken to comply with the Mitigation Hierarchy, particularly in relation to minimising impacts on biological diversity and rare or threatened species or ecological communities. The Data Report must clearly address each of the following:

a. avoidance—measures should 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 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);

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 further minimised should be offset by the achievement of a significant environmental benefit that outweighs that impact.

Further information on how to address the Mitigation Hierarchy is in Section 6 Assessing against the mitigation hierarchy.

Principles of clearance (Schedule 1 of the Act)

Data Reports must provide information on and a recommendation ('Not at variance', 'At variance' or 'Seriously at variance') for principles b, c and d. This is required to apply the Risk assessment. If a Data Report is in relation to a level 3 or 4 application that will be subject to a development application, then principles (a) – (g) need to be addressed. The information required and how to assess against the principles are described in Section 4 Assessing against the principles of clearance.

Risk Assessment

For matters subject to approval under Schedule 1 Part 6, identify the level of risk the proposed clearance presents to biological conservation (level 1, 2, 3 or 4) as determined in accordance with Section 3.

Addresses any impacts on soil, water and other natural resources

Where a clearance has potential impacts on soil, water or other natural resources, the NVC will seek comment from the relevant agency or body.

2.6 Significant environmental benefit

In order for the NVC to approve clearance under the Act or Schedule 1 Part 6 of the Regulations or for clearance to be permitted under Schedule 1 Part 4 or 5 of the Regulations, the NVC must be satisfied that actions will be taken that, after taking into account the loss of vegetation from the clearance, will result in a SEB. The SEB must be compliant and will be considered in accordance with the:

- Policy for a Significant Environmental Benefit under the *Native Vegetation Act 1991* and the *Native Vegetation Regulations 2017* (2026) (**SEB Policy**)
- Guide to Calculating a Significant Environmental Benefit under the *Native Vegetation Act 1991* and the *Native Vegetation Regulations 2017* (2026) (**SEB Guide**)[6].

2.6.1 Proposed significant environmental benefit information

The Data Report must propose how the SEB is to be achieved. It may propose an on-ground SEB (direct SEB, SEB credit, assignment of SEB credit, or Third Party SEB) or a payment into the Native Vegetation Fund. The NVC strongly supports additional protection of SEB areas in perpetuity through the establishment of a Heritage Agreement or Management Agreement, as appropriate.

On-ground Significant Environmental Benefit

If a proponent proposes to achieve the SEB on ground, the following information must be provided:

[6] The current SEB Policy, SEB Guide and other offsetting information can be found on the DEW website: https://www.environment.sa.gov.au/topics/native-vegetation/offsetting

- **Property** details (section/hundred, allotment/plan)
- **Background** information relating to the proposed SEB area (current and past land use (including stock grazing history if known), proposed management actions, existing encumbrances, zoning restrictions, dedicated purposes of crown land (if applicable) and other matters that may cause future disturbance or impact on the land; particularly explain any features of the site that will result in an adjustment of SEB points for non-standard site management or non-standard protection gain
- **Description of vegetation** proposed to be established as a SEB (summary information for the vegetation assessment of the area including vegetation associations recorded and dominant species, significant weeds, threatened species and general description of the condition)
- Whether the application is in relation to a **Third Party SEB** or the use or assignment of **SEB credit**. This must include the SEB reference number or accredited third party provider information. Application forms will be required to be submitted for a Third Party SEB or assignment of Credit
- Whether a **Heritage Agreement** or **Management Agreement** will be entered into as part of the protection of the site (see the Act and SEB Policy for further details)
- **Spatial information** on a map which includes, at a minimum, the following information: aerial imagery, cadastral boundaries, Landscape Region boundaries, roads, and the proposed SEB area. The map should be presented at multiple scales including:
    - Site map (recommended at a scale of 1: 10 000 or lower) showing the boundary of the area of the proposed SEB
    - Location map (recommended at a scale of 1:50 000 or higher) and showing landscape features, site boundary and any other relevant details, such as nearby Conservation Reserves or Heritage Agreement, relevant at this scale
- Representative **photographs** of the areas. Photograph locations should be referenced to GPS waypoints (AMG reference) and recorded on the map
- A **Native Vegetation Management Plan**. All on ground SEB areas require an NVC approved Management Plan. It is best to provide this at the time of application. However, if an applicant is proposing multiple potential SEB areas or is unsure whether approval will be granted for their proposed SEB, the Management Plan can be submitted at a later date during the assessment process but prior to any clearance consent. The Management Plan must outline the works to be undertaken, annual monitoring to be conducted and ongoing obligation in relation to the SEB area. The NVC has templates (for simple and complex sites) that should be followed (refer to the Template Instructions document to decide on which template to use).

Significant Environmental Benefit Payment

If a proponent proposes to achieve the SEB via a payment into the Native Vegetation Fund, information must be provided on the amount required to be paid.

2.6.2 Significant environmental benefit obligation

The Data Report must provide summary information (preferably in table form) on the following matters to contribute to the determination of the SEB obligation.

Clearance area

For patches of vegetation assessed via the Bushland or Rangeland assessment method[7] for a proposed clearance:

- Each vegetation association within the proposed impact area
- Area (hectares) of proposed impact for each vegetation association
- Unit Biodiversity Score for each vegetation association
- Total Biodiversity Score for each vegetation association.

For trees assessed via the Scattered Tree assessment method for proposed clearance:

- Species of each tree to be cleared
- Biodiversity Score for each tree.

The Data Report must contain a map that identifies the location of each vegetation association and scattered tree proposed to be impacted. The map must be able to be cross referenced with the summary information.

Proposed SEB Area

For patches of vegetation assessed via the Bushland or Rangeland assessment method for a proposed SEB:

- Each vegetation association within the proposed SEB area
- Area (hectares) of each association
- Unit Biodiversity Score for each association
- Gain Score for each association.

The Data Report must contain a map that identifies the location of each vegetation association within the proposed SEB. The map must be able to be cross referenced with the summary information.

SEB Payment

For a proposed payment into the Native Vegetation Fund:

- Rainfall factor
- Economies of scale
- Payment amount required in relation to the proposed clearance.

2.7 Vegetation assessment scoresheets

The Data Report must be accompanied with copies of vegetation assessment scoresheets for all assessments undertaken, whether in relation to the proposed clearance or a SEB area. It is preferable for data sheets to be submitted electronically (Excel format).

Survey information will be stored within the Department of Environment and Water (DEW) BDBSA database available for future reference.

[7] Manuals, data sheets and other tools for assessing vegetation by Accredited Consultants are available on the DEW website: https://www.environment.sa.gov.au/topics/native-vegetation/accredited-consultants

3 Risk assessment

3.1 Background

The risk assessment approach applies to applications considered under Section 28 of the Act, Regulation 12 of the Regulations, and development application referrals under the PDI Act. The risk assessment is intended to identify upfront the likelihood of impact on biodiversity conservation.

Two considerations will be applied to assess the risk to biodiversity conservation of a proposed clearance:

- the size of the clearance (area of clearance or number of trees to be cleared)
- the presence of threatened species or communities (representing 3 of the 'Principles of Clearance' from the Act; Figure 1).

Principles of Clearance (Native Vegetation Act)

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

(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;…"

Figure 1 Principles of clearance explicitly addressed in the risk assessment

3.2 How risk is assessed

Based on available evidence and expert opinion, criteria for assessing and approving applications have been developed (Table 1). This is intended to ensure the information provided and the obligations imposed are proportionate to the likely impact of a clearance activity.

Table 1 is applied to all the vegetation that is proposed to be cleared as part of an application, along with any clearance for associated applications. In relation to the Escalating matters, if any of the clearance is deemed to be Seriously at variance with the Principles of clearance b, c and d, then the clearance as a whole is raised to the next level.

Table 1 Criteria, assessment process and SEB for levels of clearance

	Agricultural (EP, GA, H&F, KI, LC, M&R and N&Y Landscape Regions plus Port Augusta City Council and the Flinders Ranges Council).		**Pastoral** (SAAL and AW Landscape Regions excluding Port Augusta City Council and the Flinders Ranges Council).		**Escalating matters** Clearance assessment will be raised to the next level if;
	Patches - clearance	**Trees - clearance**	**Patches - clearance**	**Trees - clearance**	
Level 1	0.05ha or less	5 trees or less	3ha or less	5 trees or less	Clearance involves any trees with a trunk circumference measured at 1 m above the ground of (for multi stemmed trees, measure the largest trunk/stem): - 50 cm or more for Agricultural zone, or - 30 cm of more for the Pastoral zone, or The site contains a listed species or contains threatened community under either the NP&W Act or EPBC Act
Assessment	Field assessment where associated with a Development Application - Accredited Consultant to supply an assessment using the Bushland or Rangeland or Scattered tree method. Where Development approval is not required, applicant may provide the information.				
SEB	$500 payment into the Native Vegetation Fund				
Level 2	**>0.05 ha to 0.5 ha**	**6 - 20 trees**	**>3 ha to 10 ha**	**6 - 20 trees**	The clearance is seriously at variance with Principle of Clearance 1(b), 1(c) or 1(d).
Assessment	Field assessment (by Accredited Consultant) – Bushland or Rangeland assessment method or Scattered tree assessment				
SEB	Determined as per SEB Policy and SEB Guide				
Level 3	Total Biodiversity Score of less than or equal to **250**		Total Biodiversity Score of less than or equal to **2500**		The clearance is seriously at variance with Principle of Clearance 1(b), 1(c) or 1(d).
Assessment	Field assessment (by Accredited Consultant) - Bushland, Rangeland or Scattered tree assessment and a documented Fauna survey.				
SEB	Determined as per SEB Policy and SEB Guide				
Level 4	Total Biodiversity Score of greater than **250**		Total Biodiversity Score of greater than **2500**		
Assessment	Field assessment (by Accredited Consultant) - Bushland, Rangeland or Scattered tree assessment and a documented Fauna Survey. Representations invited from the public, and relevant agencies or bodies.				
SEB	Determined as per SEB Policy and SEB Guide				

3.3 Risk assessment supporting information

The following information will support the implementation of the Risk Assessment.

3.3.1 Information provided

Level 1 clearance (not associated with a development application)

The applicant provides information via an online application. Information required includes:

- a map of area of impact
- site photographs
- explanation of the purpose of clearance
- why there is no alternative involving no clearance or less clearance
- whether there have been any associated clearance applications in the last 5 years
- any associated documentation.

The NVC will determine if the site contains listed species or threatened community under either the NP&W Act or EPBC Act, and therefore the application is escalated to a level 2.

All other applications

The applicant must engage an Accredited Consultant to provide a Data Report to be developed in accordance with the requirements of this Guide.

3.3.2 Associated application

When determining the risk assessment level for an application to clear, the NVC will have regard to any associated applications and may, if appropriate, increase the level of assessment according to the total impact of all associated clearances. An application to clear is deemed to be associated and therefore relevant, if the following applies:

- An application to clear native vegetation was approved or has been applied for on the same property title within the last 5 years, regardless of whether the applicant was the owner of the land at the time of the previous application
- An application to clear native vegetation was approved or has been applied for in relation to the same landowner within the last 5 years, regardless of whether the application is for the same property title
- Where the applicant is not the direct owner of the land (e.g. local councils managing land under their care and control, utility companies building infrastructure) or clearance will occur on land not subject to a property title (e.g. road reserve), an application to clear native vegetation was approved or has been applied for within 5 km of the proposed clearance area and directly related to the current application (i.e. for the same project, development or piece of infrastructure) within the last 5 years.

3.3.3 Fauna survey

Level 1 clearance (not associated with a Development Application)

Fauna information is not required. The NVC will assess the likelihood of the presence of threatened fauna species.

Level 1 (associated with a Development Application) or Level 2 clearance

A database search (e.g. BDBSA, EPBC search tool, Atlas of Living Australia) plus any direct observation, incidental records of fauna or suitable habitat noted during the flora assessment.

Level 3 clearance

A database search (e.g. BDBSA, EPBC search tool, Atlas of Living Australia) plus direct observation and active searching for the presence of fauna or suitable habitat. This should be based on a biological survey methodology and include active searching, such as inspecting potential habitat elements (e.g. hollows, burrows, under logs and leaf litter, rocky outcrops) for the presence of fauna species or searching for associated evidence of habitat usage (e.g. tracks, scats, diggings, nests). Specifically designed and targeted surveys should be conducted where the database search and/or observations indicate the presence of a threatened species listed under the EPBC Act or NP&W Act.

Level 4 clearance

A database search (e.g. BDBSA, EPBC search tool, Atlas of Living Australia) plus a clearly documented onsite survey. This should include active searching, such as inspecting potential habitat elements (e.g. hollows, burrows, under logs and leaf litter, rocky outcrops) for the presence of fauna species or searching for associated evidence of habitat usage (e.g. tracks, scats, diggings, nests). Specifically designed and targeted surveys should be conducted where the database search and/or observations indicate the presence of a threatened species listed under the EPBC Act or NP&W Act. This should include direct sampling methods to detect the presence of the species including, but not limited to: Intensive and designed visual searching, Mist netting, Elliot traps, Camera traps, Pitfall traps, Hair tubes, Spotlight counts, Cage traps, Trip lines, and Auditory searches and Acoustic Monitoring. Surveying should be conducted as per DEH (2000) Guidelines for Vertebrate Surveys in South Australia.[8]

Information must be provided on the survey methods followed, survey effort (time/days and area surveyed) and results.

Note – surveyors should have experience conducting field surveys and should be able to identify threatened species and their habitats relevant to the study area. Surveyors must ensure that any relevant fauna permit (e.g. under the NP&W Act) has been obtained prior to conducting the survey.

3.3.4 Significant environmental benefit (SEB)

Level 1 clearance

If the application is approved, the SEB is a $500 payment into the Native Vegetation Fund.

Level 2, 3 or 4 clearance

If the application is approved, the SEB must be determined in accordance with and at a level compliant with the SEB Policy and SEB Guide.

3.3.5 Consultation (not associated with a Development Application)

Level 4 clearance

Matters will be referred to relevant statutory authorities and the application will be made available on the DEW website to enable the public to make written submissions. Submissions will be required within 28 days of the application being made available for comment.

3.3.6 Approval

Under section 15 of the NVC may delegate its powers and functions to another person or body. Information about current delegations can be found on NVC webpage. The delegations are reviewed and updated annually.

[8] Available at: https://data.environment.sa.gov.au/Content/Publications/vertebrate_survey_manual.pdf

4 Assessing against the principles of clearance

This section explains the information that must be provided in the Data Report and is a guide as to how the NVC will assess an application to clear native vegetation or development referrals under the PDI Act in relation to the Principles of Clearance of native vegetation.

Moderating factors along with the general information provided will be taken into account when the NVC assesses an application against the principles, and therefore may change the recommendation. This may either increase the level of variance (e.g. from At Variance to Seriously at variance) or reduce it (e.g. from At variance to Not at variance).

4.1 Principles of clearance of native vegetation

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

(a) it comprises a high level of diversity of plant species

Information to be provided

Information is required on the number of plant species occurring in the clearance area for each vegetation association present. This must include native and introduced species. The application must also provide the Bushland Plant Diversity Score for each vegetation association.

Note the Rangelands Assessment method does not use a plant diversity score, therefore do not consider principle 1a for rangelands assessments.

Determining variance with the principles

Variance with the principles will be considered in accordance with Table 2. This information is derived from the Bushland assessment method and is an indication of the species diversity of a site relative to what would be expected in a site of good condition of the same vegetation community.

Table 2 Plant species diversity

Native plant species diversity score	Remnant area
<10	Not at variance
10 - 20	At variance
>20	Seriously at variance

Moderating factor to be considered by the NVC

Amount of clearance related to area of remnant

Where only a very small area of vegetation will be impacted relative to the amount of vegetation within the local vicinity (less than 0.25% of the native vegetation within a 5 km radius to be impacted), this may reduce the impact from 'Seriously at variance' to 'At variance', or 'At variance' to 'Not at variance'.

(b) it has significance as a habitat for wildlife

Information to be provided

Information is required on the habitat contained in the proposed clearance area in relation to its significance as habitat for wildlife. In particular, does the area of vegetation:

- support rare or threatened species, including regionally threatened species.
- support the habitat used by rare or threatened species, even if they are not present at the time the area is assessed (e.g. hollows)
- likely support a high diversity of animal species
- provide a corridor for movements between other areas of native vegetation, especially in heavily cleared areas
- provide a refuge (an important area of habitat at particular times, such as drought or when normal food supplies are scarce)

Determining variance with the principles

Variance with the principles will be considered in accordance with Tables 3 and 4. If it is determined to be seriously at variance with any of the criteria listed in the tables below, then the clearance will be considered 'Seriously at variance'.

Table 3 Threatened fauna data from bushland or rangeland assessment

Fauna habitat	At variance with the principles
Threatened Fauna Score of 0	Not at variance
Threatened Fauna Score of <0.05	At variance
Threatened Fauna Score of ≥0.05	Seriously at variance
Or	
A vegetation association with a Unit Biodiversity Score of >50	Seriously at variance

Note – the vegetation assessments are designed to measure a range of attributes relating to the health, condition and position of the vegetation under assessment. This is expressed as the Total Biodiversity Score. The higher the score, the more likely that the fauna species will utilise the site or the tree.

Table 4 Threatened fauna data from scattered tree assessment

Fauna habitat	At variance with the principles
Threatened fauna habitat score of 0	Not at variance
Threatened fauna habitat score of <1.2	At variance
Threatened fauna habitat score of ≥1.2	Seriously at variance
Or	
A tree with a Total Biodiversity Score of >7	Seriously at variance

Note 2 – the NVC has a limited discretion under section 29 of the Act to approve clearance that is considered to be seriously at variance.

Moderating Factors to be considered by the NVC

Impact Significance

The following criteria are used to determine whether an action will have a significant impact on listed threatened fauna species and therefore clearance will be raised to 'Seriously at variance'. A clearance action will have or is likely to have a significant impact on a threatened species if it may:

- lead to a long-term decrease in the size of a population, or
- reduce the area of occupancy of the species, or
- fragment an existing population into two or more populations, or
- adversely affect habitat critical to the survival of a species, or
- modify, destroy, remove, isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline, or
- result in invasive species that are harmful to a threatened species becoming established in the threatened species habitat, or
- interfere with the recovery of the species.

If the NVC is of the opinion that the clearance will not have a significant impact on fauna habitat, the clearance may be reduced to 'At variance'.

Significant benefit

If the SEB provides a benefit to the threatened species that is well over and above what is required in the SEB Policy and Guide, it may be reduced to 'At variance'.

Common species

If the vegetation provides habitat for native species that are relatively common, and the area of clearance is not considered essential habitat to maintain the local population, it may be reduced to 'At variance'.

Non-essential habitat

If the clearance is of non-essential habitat for threatened species and the clearance will have a negligible impact on that species local population over the long term (i.e. next 20 to 50 years), it may be reduced to 'At variance'.

(c) it includes plants of a rare, vulnerable or endangered species

Information to be provided

Information is required on the threatened plant species recorded or potentially occupying the area of impact (noting that some species may not be recorded at the time of assessment but may still occur within the area – e.g. orchids). Clearance of areas of native vegetation that include plant species of conservation significance listed in Schedules 7, 8 and 9 of the NP&W Act, or in the Commonwealth EPBC Act, is likely to be considered seriously at variance with this principle and less likely to be approved. The information required includes:

- threatened species present or potentially present within the area of impact
- distribution of the species within the area of impact
- sustainability of the population
- level of impact the proposed clearance may have on the local population of the plant species
- number of plants likely to be impacted in the clearance area.

Determining the variance with the Principles

Variance with the principles will be considered in accordance with Tables 5 and 6.

Table 5 Threatened flora data from bushland or rangeland assessment

Threatened Flora Score	At variance with the principles
Threatened Flora Score of 0	Not at variance
Threatened Flora Score of <0.1	At variance
Threatened Flora Score of ≥0.1	Seriously at variance

Table 6 Threatened flora data from scattered tree assessment

Threatened flora	At variance with the principles
Threatened Flora Score of 0	Not at variance
Threatened Flora Score of 0.3	At variance
Threatened Flora Score of >0.3	Seriously at variance

Moderating factors to be considered by the NVC

Impact Significance

The following criteria are used to determine whether an action will have a significant impact on listed threatened plant species and therefore clearance will be raised to 'Seriously at variance'. A clearance action will have or is likely to have a significant impact on a threatened species if it may:

- lead to a long-term decrease in the size of a population, or
- reduce the area of occupancy of the species, or
- fragment an existing population into two or more populations, or
- adversely affect habitat critical to the survival of a species, or
- modify, destroy, remove, isolate or decrease the availability or quality of habitat to the extent that the species is likely to decline, or
- result in invasive species that are harmful to a threatened species becoming established in the threatened species habitat, or
- interfere with the recovery of the species.

If the NVC is of the opinion that the clearance will not have a significant impact on a threatened plant species, the clearance may be reduced to At variance or Not at variance.

Number of plants to be cleared

If less than 1% of the individual plants are affected within the immediate vicinity (within a 1 km radius) of the proposed clearance, or the affected individual plants can be transplanted or replaced easily, the proposed clearance may be moderated to 'At variance'.

Significant benefit

If the SEB provides a benefit to the threatened species that is well over and above what is required as detailed in the related SEB Policy and SEB Guide, it may be reduced to 'At variance'.

(d) the vegetation comprises the whole, or a part, of a plant community that is Rare, Vulnerable or Endangered

Information to be provided

Information is required on whether any of the vegetation associations recorded within the area of impact comprises a threatened plant community. A threatened plant community is considered rare, vulnerable or endangered in accordance with the "List of Rare and Threatened Vegetation Communities in South Australia's Agricultural Regions" (Native Vegetation Unit 2026), or threatened communities listed under the EPBC Act.

It must be determined whether the scattered trees under application are part of a threatened plant community. As an example, in the South East where 35% of the remaining red gum woodland consists of paddock trees, red gum woodland at approximate 'natural densities' with or without an understorey layer (even if very degraded) would be treated as part of a threatened plant association.

Isolated trees are not considered to be part of a plant community, and the proposed clearance of sparsely scattered trees is not likely to be considered at variance with this principle.

Determining variance with the Principles

Clearance of vegetation considered to be representative of plant communities listed under the provisional list of threatened ecosystems of South Australia or the EPBC Act will be considered Seriously at variance with this principle.

Moderating factors to be considered by the NVC

Impact Significance

The following criteria are used to determine whether a clearance proposal will have a significant impact on a listed threatened plant community and therefore clearance will be raised to 'Seriously at variance' with this principle. An action has, will have, or is likely to have a significant impact on a threatened plant community if it does, will, or is likely to:

- lead to a long-term adverse effect on a plant community, or
- reduce the extent of a community, or
- fragment an occurrence of the community, or
- adversely affect habitat critical to the survival of a plant community, or
- modify or destroy abiotic (non-living) factors (such as water, nutrients, or soil) necessary for the community's survival, or
- result in invasive species that are harmful to the threatened plant community becoming established in an occurrence of the community, or
- interfere with the recovery of a plant community.

In addition, nationally adopted Recovery Plans may also provide further guidance on whether a clearance action is likely to be significant.

If the NVC is of the opinion that the clearance will not have a significant impact on a threatened plant community, the clearance may be reduced to At variance.

Area of impact

If less than 1% of the area of that vegetation community within the immediate vicinity (within a 1 km radius) of proposed clearance is to be impacted, the proposed clearance may be moderated to 'At variance'.

Condition of the vegetation

If the vegetation is in a highly degraded state and is unlikely to return to a functional state without significant human intervention, the proposed clearance may be moderated to 'At variance'.

(e) it is significant as a remnant of vegetation in an area which has been extensively cleared

Information to be provided

Information is required to assist in identifying the significance of a remnant. An area is significant as a remnant if it is representative of a former vegetation type that has been extensively cleared or modified.

Information must be provided on remnancy figures for the IBRA Association and IBRA subregion.

The remnancy figures are used as an indication of the extent of clearance that has occurred within the region of the application area. The lower the remnancy figure the more significant the remaining vegetation is.

Determining variance with the principles

When considering this principle, remnancy is considered at 2 levels as listed in Table 7.

Table 7 Remnancy preference

	Hierarchy Level	Appropriateness
1	IBRA Association	Local
2	IBRA Sub-region	Sub-regional

Variance with the principles will be considered in accordance with Table 8 at both IBRA Association and IBRA Sub-region levels. If the clearance is determined to be significantly at variance at either of these levels, then the clearance is deemed 'Seriously at variance' with this principle.

Table 8 Summary of the significance of the remnancy

Remnancy	Total Biodiversity Score (Bushland or Rangeland assessment plus the Scattered tree assessment) for the whole area of impact		
	>500	5 - 500	<5
>30%	At variance	At variance	Not at variance
>10 – 30%	Seriously at variance	At variance	Not at variance
3 – 10%	Seriously at variance	Seriously at variance	At variance
<3%	Seriously at variance	Seriously at variance	Seriously at variance

Moderating Factors to be considered by the NVC

Impact significance

The following criteria are used to determine whether a clearance proposal will have a significant impact on a remnant in a highly cleared landscape and therefore clearance will be raised to 'Seriously at variance' with this principle. An action has, will have, or is likely to have a significant impact on a remnant in a highly cleared landscape if it does, will, or is likely to:

- Impact on a tree species or vegetation community that has been selectively removed within the IBRA Association or IBRA Subregion and are therefore underrepresented in the vegetation that remains.
- Impact on a remnant in relatively good condition, particularly if the vegetation is within the IBRA Association or IBRA Subregion where vegetation has largely been degraded.

Quality of remnant

If the vegetation is in poor to very poor condition, is continuing to degrade and its long term (next 20 to 50 years) persistence is unlikely, then it may be reduced to 'At variance'.

(f) it is growing in, or in association with, a wetland environment

Information to be provided

Information is required on whether the proposed clearance area is within the vicinity of a wetland (plants growing in or on the edge of a wetland) and information on how connected the vegetation is with the functioning of that wetland. A plant is considered to be growing in association with a wetland if that plant is located close to a wetland, or there is evidence that wetland species are using it.

A wetland is land permanently or temporarily under water or waterlogged that must have surface water or waterlogging of sufficient frequency and or duration to affect the biota. The definition also includes creeks, rivers and streams.

Determining variance with the principles

Clearance of vegetation growing in, on the edge of, or in association with a wetland will be considered to be 'Seriously at variance' with this principle, if the clearance will have a significant impact.

Moderating Factors to be considered by the NVC

Impact significance

The following criteria are used to determine whether a clearance action will have a significant impact on a wetland, and therefore be considered 'Seriously at variance' with the principle. Clearance will have a significant impact on the ecological character of a wetland if it is likely to result in:

- areas of the wetland being destroyed or substantially modified
- a substantial and measurable change in the hydrological regime of the wetland (e.g. a change in the volume, timing, duration and frequency of ground and surface water flows to and within the wetland)
- the habitat or lifecycle of native species dependent upon the wetland being seriously affected
- a substantial and measurable change in the physio-chemical status of the wetland (e.g. change in the level of salinity, pollutants or nutrients in the wetland, change in water temperature which may adversely impact on biodiversity)
- the introduction of invasive species.

If the NVC is of the opinion that the clearance will not have a significant impact on a wetland environment, the clearance may be reduced to At variance.

Quality of wetland

If the wetland has been highly degraded and is in poor to very poor condition, then it may be reduced to 'At variance'.

Area of impact

If the wetland is relatively small, considering the wetlands within the same system or within a close proximity (within a 5 km radius), then it may be reduced to 'At variance'.

(g) it contributes significantly to the amenity of the area in which it is growing or is situated

Information to be provided

Amenity is described as "any quality, condition or factor that makes, or contributes to making, the locality harmonious, pleasant or enjoyable". Amenity value means how highly the trees (or other vegetation under application) are regarded by the community as part of the local landscape.

The significance of the impact from a proposed clearance on amenity values will be considered against the following matters:

- Location of the vegetation
    - e.g. near a township, adjacent to a main road or tourist route
    - Cultural or historical values and local community views
    - Number and distribution of trees to be cleared
        - how many trees will be retained?
        - would removal of the trees change the landscape character?
- Species and size of trees
    - large trees generally have more impressive landscape quality
    - red gums, because of their size, are often considered of high landscape value
- Condition and shape
    - trees suffering extensively from dieback are not generally aesthetically pleasing
    - well-shaped trees may be considered of greater landscape quality.

Determining variance with the Principle

In determining if clearance is at variance with the principle, the NVC will have regard to the local council's recommendations (if any) in relation to the application.

(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 landscape board for the landscape management region where the land is situated has, as part of its regional landscape plan under the *Landscape South Australia Act 2019*, assessed—

i. the capability and preferred uses of the land; and

ii. the condition of the land; and

iii. according to that assessment the use of the land for that purpose cannot be sustained

Information to be provided

Information will be provided on potential impacts of the proposed clearance on soil erosion, salinity, surface or underground water, or flooding.

The NVC must consult with the regional landscape board for the landscape region where the native vegetation is situated and have regard to the Board's recommendations (if any) in relation to the application.

(l) the clearance of the vegetation would cause significant harm to the River Murray within the meaning of the River Murray Act 2003

The NVC must consult with the Minister for the *River Murray Act 2003* where the application falls within the River Murray Act area, and comply with the Minister's direction.

(m) the clearance of vegetation would cause significant harm to the Adelaide Dolphin Sanctuary

The NVC must consult with the Minister for the Adelaide Dolphin Sanctuary where the application falls within or adjacent to the Adelaide Dolphin Sanctuary, and have regard to the Minister's views.

5 Assessing against intact stratum

5.1 Definition: 3A—substantially intact vegetation

1. A stratum of native vegetation will be taken for the purposes of this Act to be substantially intact if, in the opinion of the NVC—
    a. the stratum has not been seriously degraded by human activity during the immediately preceding period of 20 years; or
    b. the only serious degradation of the stratum by human activity during that period has been caused by fire.
2. In this section—
   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.

Note – the NVC may give its consent to clearance of vegetation determined to be substantially intact if it's for the purpose of harvesting native vegetation and if, in its opinion, the harvesting will not result in any lasting damage to the plants comprising the vegetation, lead to significant soil damage or erosion, or result in any long-term loss of biodiversity.

5.2 Determining the presence of substantially intact vegetation

For the purpose of determining if a stratum is substantially intact, the NVC will consider the following matters:

1. Does the native vegetation constitute a continuous stratum? Each of the following must be satisfied:
    - The plants within the stratum of interest are growing at original (pre-European) density for that community; and
    - That stratum contains a diversity of species similar to original (pre-European) vegetation of that community; and
    - Is part of a contiguous area of vegetation consisting of the stratum, including on adjacent properties, that is at least one hectare in area and for linear patches, generally greater than 30 m in width. Small, isolated or linear patches of vegetation are subject to significant edge effect and likely to degrade over time; and
    - Does not contain introduced perennial species occupying greater than 20% cover within that stratum.

Scattered trees may be considered an intact stratum if that vegetation community is naturally characterised by sparse tree cover and the tree density is approaching its natural state.

2. Has the vegetation been subject to degradation within the past 20 years? The following must be satisfied:
    - Any degradation must have been undertaken in compliance with the Act
    - Must have occurred within the past 20 years from the date of application
    - Must be a direct result of human activity
    - May include the following:
        - Fragmentation of the area of vegetation
        - Modifying, destroying or removing vegetation cover or plant species diversity
        - Changing abiotic (non-living) factors such as water, nutrients or soil which subsequently impacts of native vegetation. This may include, but not limited to altered hydrology, compaction of soil or increased soil nutrient levels.
    - Does not include degradation as a result of fire.

6 Assessing against the mitigation hierarchy

6.1 Mitigation principles

For clearances under Part 3, Division 5 of the Regulations, proponents must demonstrate how they have complied with the Mitigation Hierarchy. The NVC will consider if the proponent has taken sufficient measures to avoid and minimise clearance as far as practicable. The NVC must be satisfied that there is no other practicable alternative that involves less clearance, or clearance of less significant vegetation, or clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared. The mitigation principles are outlined in the following sections.

6.1.1 Avoidance

Measures should be taken to avoid clearance of native vegetation wherever possible.

Demonstrating avoidance is the key objective of any proposed clearance activity. Doing this early in the planning process will provide the flexibility required to inform decision making or make adjustments to the location or design of the impact (this includes any incidental clearance such as by moving machinery to obtain access to the site).

There are many incentives for avoiding the impacts of clearance:

- Ecologically, it is more likely to generate a no-net loss outcome
- Higher certainty of success in terms of approval and the longevity of the activity and not requiring to undertake further clearance to maintain it in the future
- It shows corporate, social and political responsibility for avoiding impacts on the environment (e.g. build support for, or reduce opposition to, a project)
- It does not require the applicant to offset impacts of biodiversity loss associated with restoring or offsetting, which takes time and funds.

In determining if the avoidance requirement has been achieved, the NVC will consider the following points (applicants can use this as a checklist too):

- Is the location the most appropriate for the activity or are there alternate sites available? There may be alternative sites on property owned by the applicant, or the applicant could purchase or lease alternative land.
- Can the size or scale of the development be changed to avoid impacts? This may include removing elements of a development that will have unacceptable impacts.
- Can the design of the development be adjusted or are there alternative methods/designs available that would avoid impacts? This may include investigating alternative options for achieving the same outcome (e.g. using barriers on roadsides to address safety concerns rather than removing a tree) or alternative designs (e.g. re-routing a road to avoid a tree that could cause safety concerns).
- Are there actions that can be undertaken during construction and operation to prevent impacts? This may include:
    - placing and storing equipment, vehicles and machinery away from vegetated areas
    - placing tailings, soil stockpiles or waste rock storage facilities, processing plants and waste water catchment facilities away from vegetated areas

- clearly marking on ground areas that are to be avoided at all times to prevent unintended impacts or accidental clearance
- suppressing dust to prevent indirect impacts
- ongoing monitoring and management of potential impacts such as weed and pest invasion
- documenting and implementing procedures for chemical and herbicide use to prevent indirect or off target impacts.

6.1.2 Minimisation

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).

- If avoidance is not possible, the applicant must consider ways to alter the location, design or construction method of the activity so as to minimise the clearance. Direct impacts are caused by an activity and occur at the same time and place of the development. Indirect impacts are caused by the action but occur at a later point in time or affect a different location. Cumulative impacts result from the incremental impact of past, present and future activities.
- The consideration of cumulative impacts allows the NVC to take into account impacts that individually may be minor, but over time and in conjunction with other activities may be significant.
- In determining if the minimisation requirement has been achieved, the NVC will consider the same matters as avoidance, but with the aim of limiting impacts rather than completely avoiding.

6.1.3 Rehabilitation or restoration

Measures should be taken to rehabilitate ecosystems that will be degraded, and to restore ecosystems that will be destroyed, due to impacts of clearance that cannot be avoided or minimised.

- Measures for on-site restoration activities should be identified. The aim should be to achieve the following:
  - Limiting impacts as far as possible to allow the vegetation to naturally re-establish once the impact has ceased
  - Re-instating the vegetation as much as possible through restoration activities once the impact has ceased.
- Applicants should consider storing cleared vegetation and the top soil containing soil seed bank in a manner that allows re-establishment once the development is complete.

6.1.4 Offset

Any adverse impact on native vegetation or ecosystems that cannot be avoided or minimised should be offset by implementing a SEB that outweighs that impact. Biodiversity offsets address any residual impacts after prevention and mitigation measures have been implemented.

The NVC will only approve clearances if the steps of the Mitigation Hierarchy have been fulfilled. Provision of an SEB is only considered by the NVC when a proponent has identified and documented appropriate measures to avoid and minimise negative impacts (direct, indirect or cumulative) on biodiversity.

Biodiversity offsets are only appropriate for projects that have rigorously applied the Mitigation Hierarchy to the fullest extent. Offsets must never be used to circumvent responsibilities to avoid and minimise damage to biodiversity and the NVC will consider this when determining whether the clearance can proceed.

The SEB Policy explains the biodiversity offsetting principles that must be met.

7 Clearance of vegetation 'seriously at variance'

The following information details the Sections of the Act that provide the NVC with a limited power to approve clearance of vegetation that would be 'Seriously at variance' with the principles of clearance.

7.1 Section 29—provisions relating to consent

1) Subject to this section, in deciding whether to consent to an application to clear native vegetation, the NVC—

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.

4) The Council may give its consent to clearance of native vegetation that is in contravention of subsection (1)(b) if—

a. the vegetation comprises one or more isolated plants; and

b. the applicant is engaged in the business of primary production; and

c. in the opinion of the Council, the retention of that plant, or those plants, would put the applicant to unreasonable expense in carrying on that business or would result in an unreasonable reduction of potential income from that business.

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.

4b) The Council may give its consent to the clearance of native vegetation that is in contravention of subsection (1)(b) if the Council is satisfied that—

a. —

i. a significant environmental benefit, which outweighs the value of retaining the vegetation, has been achieved and credited to the applicant under section 25A, or assigned to the applicant under section 25B; or

ii. a significant environmental benefit, which outweighs the value of retaining the vegetation, has been, or is to be, achieved by an accredited third party provider in accordance with section 25C; or

iii. a significant environmental benefit, which outweighs the value of retaining the vegetation, has been, or is to be, achieved by or on behalf of the applicant, having regard to the combined value of—

A. the value of any environmental benefit credited to the applicant under section 25A, or assigned to the applicant under section 25B; and
B. the value of any environmental benefit that has been, or is to be, achieved by an accredited third party provider in accordance with section 25C; and
C. the value of any environmental benefit to be achieved through the imposition of conditions and the taking of other action by the applicant; and

b. that the particular circumstances justify the giving of consent.

7.2 Definition of an isolated plant

For the purpose of Section 29(4) of the Act (as per section 3(2) of the Act):

(2) A plant will be taken to be an isolated plant if—

(a) it is at least one metre in height; and
(b) there is no other plant comprising native vegetation that is 200 millimetres or more in height within 50 metres of it.

(3) Each plant of a group of two or three plants or of a group of plants that is the subject of a determination by the Council under subsection (4) will be taken to be an isolated plant if it would be an isolated plant under subsection (2) except for its proximity to another plant, or other plants, in the group.

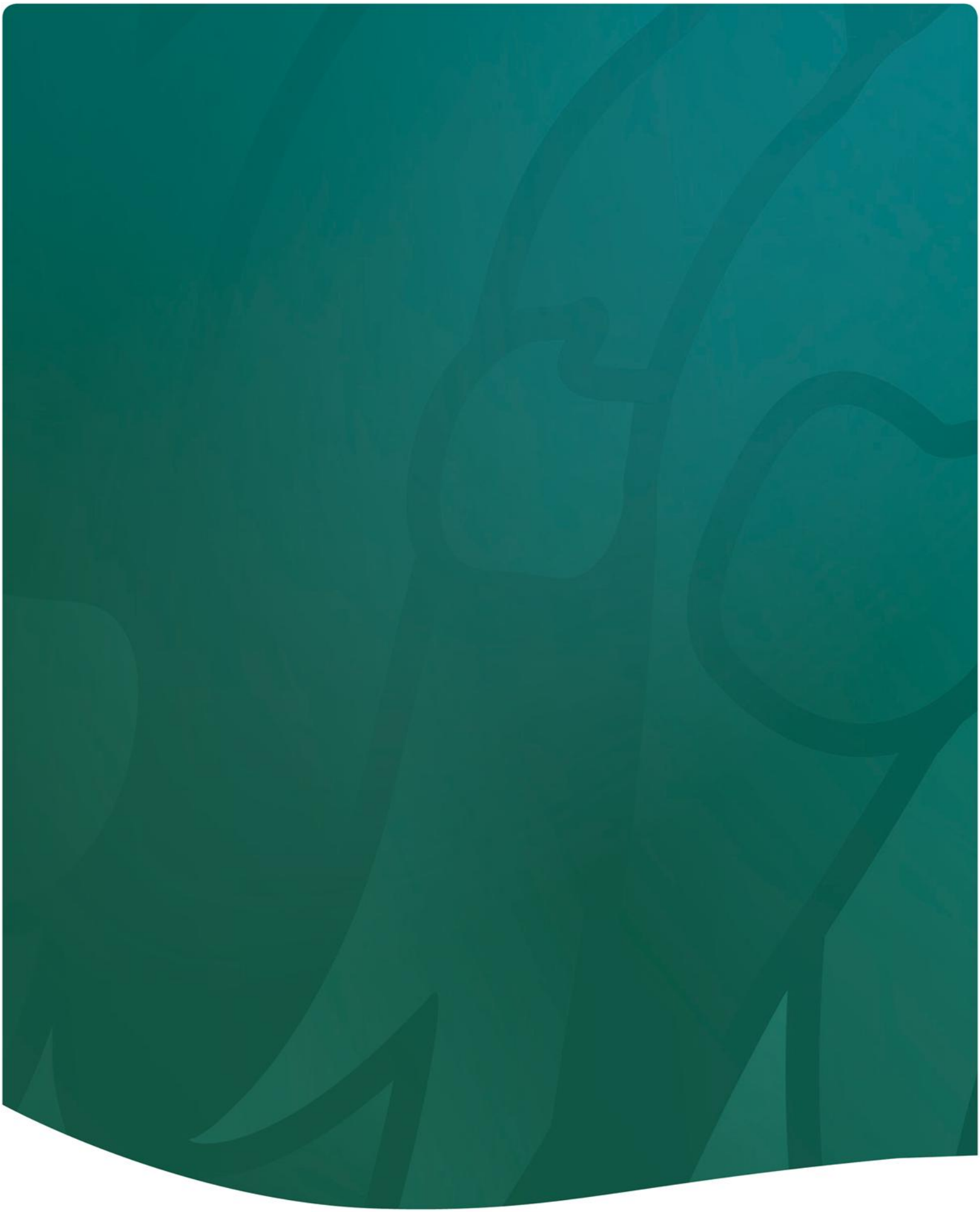
(4) The Council may, where in its opinion the circumstances of a particular case justify a determination under this subsection, determine that each plant of a group of four or more plants will be taken to be an isolated plant.

(5) A determination under subsection (4) must be agreed to by all the members of the Council present at the meeting at which it is made.

(6) The distance between two plants for the purposes of subsection (2) will be taken to be the distance between those parts of the plants that are above ground level and are closest to each other.

7.3 Guidelines in relation to Section 29(4a) of the Act

In relation to Section 29(4a), the applicable guidelines are *Guidelines for a Native Vegetation Significant Environmental Benefit Policy for the Clearance of Scattered Trees*.



Government of South Australia

Department for Environment and Water

Native Vegetation Council