



# Heritage Agreement Policy

DRAFT – October 2022

Native Vegetation Council Guideline for Section 24(3) of the *Native Vegetation Act 1991*

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## BACKGROUND

A Heritage Agreement is a permanent and legally binding contract placed on a property's title to protect an area of native vegetation.

The contract is formed between a land owner and the Minister responsible for the *Native Vegetation Act 1991* (the Act).

The Native Vegetation Council (NVC) is an advisory body to the Minister. According to Section 23(5) of the Act, the Minister must not enter into, vary or terminate a Heritage Agreement without first consulting and obtaining the approval of the NVC.

## PURPOSE

This policy outlines the principles that guide the NVC in incentivising, approving, varying, or terminating a Heritage Agreement.

## SCOPE

This policy provides guidance to the NVC and departmental staff with delegated authority to assist in administering the Act as it relates to Heritage Agreements.

The policy applies to all Heritage Agreements that are subject to the Act, including those established under the now repealed *South Australian Heritage Act 1978*.

## LEGISLATIVE CONTEXT

The NVC must take into account and seek to further the Objects of the Act when making a decision in relation to incentivising, approving, varying or terminating a Heritage Agreement.

The objects of the Act include:

- The conservation, protection and enhancement of the native vegetation of the State, particularly remnant native vegetation, in order to prevent further:
  - reduction of biological diversity and degradation of the land and its soil
  - loss of quantity and quality of native vegetation in the State
  - loss of critical habitat.
- The provision of incentives and assistance to landholders to encourage the commonly held desire of landholders to preserve, enhance and properly manage the native vegetation on their land.

- The limitation of the clearance of native vegetation to clearance in particular circumstances that will facilitate the management of other native vegetation, or will facilitate the sustainable use of land for primary production.
- The encouragement of research into the preservation, enhancement and management of native vegetation.
- The encouragement of the re-establishment of native vegetation in those parts of the State where native vegetation has been cleared or degraded.

The NVC must also not make a decision considered seriously at variance with the *Principles of native vegetation clearance* (the Principles) set out in Schedule 1 of the Act. The Principles consider matters such as plant species diversity, wildlife habitat, threatened flora, threatened vegetation communities, and remnant and amenity values.

## **MATTERS ADDRESSED IN THIS POLICY**

- [Establishing a Heritage Agreement](#)
- [Permitted activities within a Heritage Agreement](#)
- [Varying and terminating a Heritage Agreement](#)
- [Incentives to establish a Heritage Agreement](#)

### **Establishing a Heritage Agreement**

The Act stipulates that the Minister can enter into a Heritage Agreement with a land owner if the area of land nominated:

- Contains native vegetation which the Minister considers warrants preservation and enhancement; or
- Has been revegetated with species indigenous to the local area that represent a naturally occurring community, and the Minister considers the vegetation warrants preservation and enhancement.

When determining if a Heritage Agreement should be approved, the NVC will assess if:

1. The area nominated is a minimum of:
  - a. 1 ha if it contains rare or threatened vegetation communities, plants, animals or associated habitats.
  - b. 3 ha if it contains common vegetation types.
2. Native vegetation covers most of the area proposed for inclusion, or where a portion lacks native vegetation cover, that portion is less than a third of the total area and it will be subject to revegetation.
3. A management plan has been developed to address any significant management issues, such as large weed infestations or areas devoid of native vegetation, when such issues exist.
4. One or more of the following is satisfied:
  - a. Contains threatened vegetation communities, plants or animals or associated habitats.
  - b. Is in good condition with high plant diversity.
  - c. Provides for connectivity within the landscape and for the movement of native animals.
  - d. Occurs in a region that has been extensively cleared.
  - e. Is associated with a wetland environment.

The NVC will also assess if the Heritage Agreement:

1. Is the most appropriate means of maintaining and enhancing the ecological values of the site.
2. Will provide for or assist with ecological resilience and adaption to climate change.
3. Will facilitate First Nations' traditional use of the land where appropriate.
4. Is of a sufficient size and dimension to warrant protection in relation to the local landscape

context and the administrative costs of establishing and supporting the Heritage Agreement.

With regards to land that has been revegetated, the NVC will assess if:

1. The revegetation has been established with local plant species that provide sufficient cover and structure, and that is likely to develop into a self-sustaining system with only moderate ongoing management and maintenance.
2. The revegetation has been established from locally sourced seeds or specimens. The NVC will permit plants established from seed or cuttings sourced from drier climates relative to the area being revegetated to enable the plants to be resilient to climate change, but they should still be from within the same general geographic region.
3. There is a reasonable representation of plant species and structural diversity reflecting a naturally occurring community.

If the NVC determines that an area of revegetation is not of a sufficient standard for protection under a Heritage Agreement, the applicant can seek alternative protection by applying to have the revegetation declared as 'native vegetation' under the Act (refer sections 23E and 23F). This ensures that the revegetation is subject to the clearance controls under the Act as if it were naturally occurring native vegetation.

When establishing a Heritage Agreement, the applicant may apply to exclude an area from the agreement area to allow for activities to occur (such as the construction of a house) that would otherwise not be permitted within a Heritage Agreement. The NVC will assess a request for an 'exclusion zone' against the following criteria:

1. It does not significantly impact the ecological values of the site.
2. It is of sufficient size to accommodate associated structures, access and fire protection that may be required to permit the intended use.
3. It is positioned near the edge of the Heritage Agreement with existing vehicle access where possible, and is in an area of cleared or degraded native vegetation.
4. It avoids areas of ecological and cultural importance.
5. Any clearance required to facilitate the proposed activity is likely to be approved, or is permissible, under the Act or regulations.

### **Permitted activities within a Heritage Agreement**

The NVC is responsible for advising the Minister on the actions and activities permitted within a Heritage Agreement in accordance with section 23A of the Act.

A Heritage Agreement is dedicated to the conservation and protection of native vegetation and native fauna habitat, and the land it applies to should not be used in a manner that is inconsistent with that dedication.

The NVC will generally permit:

1. Revegetation in areas lacking native vegetation cover, where natural regeneration may be limited, or certain species or structural elements may be absent. Any revegetation works to be undertaken require approval by the Minister in accordance with the Heritage Agreement. The revegetation should consist of local species consistent with the expectations associated with the establishment of new Heritage Agreements.
2. Camping and caravan sites and ecotourism if the NVC and the Minister are satisfied that the conservation values of the Heritage Agreement will not be adversely affected. Any clearance of

vegetation required to facilitate these activities, whether within the Heritage Agreement or in exclusion zones, is subject to the approval of the NVC.

3. Bee keeping may be allowed to continue within a Heritage Agreement area in a manner and at a level consistent with the existing use at the time the agreement was established. Prior to finalising a Heritage Agreement, the landowner is required to provide information relating to the location and number of existing bee hive sites and the location of existing tracks to be used for bee keeping.
4. Management of over-abundant native animals if it is specifically for the purpose of improving or maintaining the condition of the vegetation within the Heritage Agreement, and it is undertaken in accordance with a destruction permit issued under the *National Parks and Wildlife Act 1972*.
5. Activities associated with incentive programs, such as Carbon Farming and Biodiversity Markets, where the activities will enhance or maintain the ecological and conservation values of the land and the respective program permits the use of such land.

Activities that impact on the ecological value of the Heritage Agreement are generally not supported, specifically:

1. The removal of native vegetation, except where permission has been granted by the NVC, or clearance is permitted in accordance with the regulations, such as:
  - a. Establishing private walking tracks, maintaining an existing vehicle track or existing infrastructure, or maintaining or upgrading a fence on the boundary of the agreement.
  - b. Enhancing the ecological values of the site (e.g. prescribed burning or clearance to facilitate weed and pest control) subject to an approved NVC management plan.
  - c. An approved clearance application under Section 28 of the Act.
2. The introduction of non-indigenous vegetation.
3. Grazing by livestock, unless it can be demonstrated via a management plan that:
  - a. The grazing is of a type, extent and duration that improves the quality of the native vegetation within the agreement.
  - b. There is no practical alternative that would result in a better outcome for the native vegetation.
4. Activities that deteriorate water quality, flow or quantity – such as a dam.
5. The introduction of non-indigenous animals.
6. The removal of wood or timber, whether standing or fallen, dead or alive.
7. The removal or disturbance of rocks or soil, including cultivation.
8. The application of fertiliser.
9. The erection of buildings or other structures.
10. Recreational use of trail bikes and other vehicles.

In certain circumstances, these restrictions can be modified where the NVC and the Minister are satisfied that the conservation values of the Heritage Agreement will not be adversely affected. Such activities may need to be described in a management plan and approved by the NVC and/or the Minister. Greater flexibility will generally be provided in relation to Heritage Agreements that were established voluntarily (i.e. not associated with a condition of consent, court order, funding arrangements or SEB offset arrangement).

### **Varying and terminating a Heritage Agreement**

A Heritage Agreement applies in perpetuity, unless terminated. Varying or terminating a Heritage Agreement requires the approval of both the NVC and the Minister. In considering an application to vary or terminate an agreement, the NVC will assess if the absence or variation of the Heritage Agreement will:

1. Have an impact on native vegetation, including any impacts associated with the likely subsequent

use of the land and if such impacts are seriously at variance with the *Principles of native vegetation clearance*, or at odds with the Objects of the Act.

2. Compromise the required outcomes associated with the establishment of the Heritage Agreement, such as those associated with the provision of funding or the achievement of a Significant Environmental Benefit offset.

Other considerations include:

1. Boundary changes may be supported if the variation:
  - a. Improves the management of the vegetation or surrounding land.
  - b. Does not significantly reduce the size of the Heritage Agreement.
  - c. Does not adversely affect the ecological value of the Heritage Agreement.
  - d. Does not exclude an area of high ecological value from the Heritage Agreement.
2. Exclusions zones sought after a Heritage Agreement has been established must meet the standard requirements of an exclusion zone set out in relation to the establishment of a Heritage Agreement, and demonstrate that the exclusion is required to enhance the management or use of the Heritage Agreement.
3. Moving an exclusion zone may be supported if it provides a positive or neutral impact on the ecological values of the Heritage Agreement.
4. The NVC is a referral agency under the *Planning, Development and Infrastructure Act 2016*, with power of direction for planning applications. Subdivision of land subject to a Heritage Agreement may be supported if:
  - a. The subdivision of land does not result in a Heritage Agreement being split over multiple parcels.
  - b. The subdivision will not require the establishment of new exclusion zones or the clearance of native vegetation within the Heritage Agreement for a house or other structures.
5. Terminations would only be permitted in exceptional circumstances, such as if:
  - a. The land will still be subject to the same or a higher level of protection, such as being replaced with a new Heritage Agreement, or becoming part of a reserve under the National Parks and Wildlife Act.
  - b. The NVC is of the opinion that a Heritage Agreement no longer provides any significant biodiversity value.

In the event that a Heritage Agreement is terminated, the owner of the land may be required to repay any funds provided for the establishment and management of the agreement, and any costs associated with the termination.

### **Incentivising Heritage Agreements**

The Native Vegetation Fund established under the Act can provide for payments to landowners for entering into a Heritage Agreement, or to assist with management of the land. In determining funding for Heritage Agreements, the NVC will prioritise applications that:

1. Provide the greatest value for money.
2. Protect and manage areas with the greatest conservation value.
3. Provide connectivity in the landscape, including adding to or expanding existing protected areas.
4. Provide greater resilience to climate change.
5. Promote and enable traditional First Nations' use of the land.

Activities and costs typically funded by the NVC in relation to Heritage Agreements include (subject to availability of funds):

1. Fencing to exclude stock.
2. Weed and pest control.
3. Development of a management plan.
4. Revegetation.
5. Other ecological restoration activities, such as ecological burning.

Section 23A(2)(f and g) of the Act allows for the Minister to make a payment to a landowner as an incentive to enter into a Heritage Agreement. The amount payable must not exceed the decrease in land value from entering the agreement (as determined by the Valuer-General). Incentive payments must be in accordance with guidelines to be developed.

## DEFINITIONS

For the purposes of this policy and related policy documents, the following definitions apply:

**The Act** means the *Native Vegetation Act 1991*.

**Departmental staff** refers to employees of the Native Vegetation Branch for the Department for Environment and Water.

## USEFUL REFERENCE SITES

Department for Environment and Water - [www.environment.sa.gov.au](http://www.environment.sa.gov.au)

Native Vegetation - [www.environment.sa.gov.au/nativevegetation](http://www.environment.sa.gov.au/nativevegetation)

Heritage Agreements - <https://www.environment.sa.gov.au/topics/native-vegetation/protecting-enhancing>

## FURTHER INFORMATION

For information contact the Native Vegetation Branch, DEW: phone 8303 9777

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Emailed to: [nvc@sa.gov.au](mailto:nvc@sa.gov.au)