



Department of
Environment

A GUIDE FOR LOCAL GOVERNMENT

Clearing Native Vegetation

*under the
Environmental Protection
Act 1986*

A GUIDE FOR LOCAL GOVERNMENT

Clearing Native Vegetation

under the Environmental Protection Act 1986

New laws under the *Environmental Protection Act* (EP Act) have made changes to the way native vegetation can be cleared in Western Australia.

Some types of clearing that did not need authorisation previously may now require a clearing permit, including clearing activities undertaken by local government.

As a result of the laws, clearing of native vegetation is prohibited unless:

- a clearing permit is granted by the Department of Environment (DoE); or
- the clearing is for an exempt purpose (for information on the exemptions, please refer to *A Guide to the Exemptions and Regulations for Clearing Native Vegetation*).

This guide explains how local governments should apply for a permit. The guide also provides some explanation of how the new laws interact with local government road maintenance and construction processes. There is also a section which responds to some frequently asked questions from local government.

For more detailed information, contact your local Environment office (see page 19 for details).

NOTE...

There are separate guidelines for landholders about the clearing permit process. These are available by visiting <http://nvp.environment.wa.gov.au> or by contacting the local DoE office.

Some of the powers and duties of the Chief Executive Officer under Part V Division 2 of the EP Act to deal with clearing permit applications for mining and petroleum activities have been delegated to the Department of Industry and Resources (DoIR) effective from 1 July 2005. The delegation applies to clearing as a result of carrying out an activity under an authority granted under the *Mining Act 1978*, the *Petroleum Act 1967*, the *Petroleum Pipelines Act 1969* or the *Petroleum (Submerged Land) Act 1982*, as well as activities under a government agreement administered by the DoIR.

All the legal requirements of the EP Act will continue to apply to these kinds of clearing. The DoIR will be the contact for industry and the Native Vegetation Assessment Branch of DoIR will manage the administration, assessment and decision making for native vegetation clearing permit applications. For assistance on clearing administered under this delegation, please contact the Department of Industry and Resources Native Vegetation Assessment Branch on 9222 3333 or at <http://www.doir.wa.gov.au/safetyhealthandenvironment/index.asp>

The following information provides a general guide to changes to the Environmental Protection Act 1986 and describes some of the changes introduced by new laws. Any person who intends to undertake activities that may involve clearing is advised to consult the actual legislation and seek advice, including legal advice, where necessary. While the Department has endeavoured to ensure the accuracy of the contents of this document, it accepts no responsibility for any inaccuracies and persons relying on this document do so at their own risk.

TABLE OF CONTENTS

WHEN DOES A LOCAL GOVERNMENT NEED A CLEARING PERMIT?	5
How is “clearing” defined?	5
What is classified as “native vegetation”?	5
Intentionally sown, planted or propagated vegetation	5
ENVIRONMENTALLY SENSITIVE AREAS	6
CLEARING FOR ROAD MAINTENANCE OR CONSTRUCTION	6
Clearing in Existing Transport Corridors- Regulation 5, Item 22	6
Clearing Resulting from Infrastructure Maintenance Activities- Regulation 5, Item 23	7
CLEARING IN COUNTRY AREAS WATER SUPPLY CATCHMENTS	8
APPLYING FOR A CLEARING PERMIT	9
Timelines for applications	9
Form C1: Application for a Clearing Permit (Area Permit)	9
Form C2 Application for a Clearing Permit (Purpose Permit)	9
COMPLETING THE APPLICATION FORM	10
Part 1 Applicant	10
Part 2 Land Details	10
Part 3 Proposal	10
Part 4 Fees	11
Part 5 Declaration & Signature	11
Part 6 Application Checklist	11
Part 7 How to lodge this application	11
SUPPORTING INFORMATION	12
Aerial Photograph or Locality Map	12
LODGING AN APPLICATION	12
Incomplete Applications	12
ASSESSMENT PROCESS	13
Confirmation	13
Advertisement	13
Inviting Submissions on Applications to Clear	13
Stage 1 Assessment	13
Principles in the Environmental Protection Act	13
Stage 2 Assessment- Providing Further Information	14
Negotiation/Discussion	14
Decision	14
APPEAL RIGHTS	14
YOUR OBLIGATIONS	16
FREQUENTLY ASKED QUESTIONS	17
Clearing resulting from accidents or to reduce danger	17
Clearing for fire hazard reduction	17
Clearing for firewood	17
Clearing to provide fencing and farm materials	17
Clearing by licensed surveyors	17
Clearing along a fence line – alienated land	18
Clearing along a fence line – crown land	18
Clearing for vehicular tracks	18
Clearing along a fence line	19
Environmentally sensitive areas	19
DEPARTMENT OF ENVIRONMENT OFFICES	19

WHEN DOES A LOCAL GOVERNMENT NEED A CLEARING PERMIT?

Under the provisions of the EP Act, clearing of native vegetation will require a permit from the Department of Environment unless the clearing is for an exempt purpose.

In summary, there are a number of exemptions that may apply to local government. Local governments should refer to *A Guide to the Exemptions and Regulations for Clearing Native Vegetation* to determine which exemptions apply to certain activities.

This guide and other information is available at <http://nvp.environment.wa.gov.au> or by contacting your local DoE office.

How is “clearing” defined?

“Clearing” means causing substantial damage to native vegetation. This includes:

- the killing or removing of native vegetation;
- the severing or ringbarking of trunks or stems;
- the draining or flooding of the land;
- the burning of vegetation;
- the grazing of stock; or
- any other activity that kills or damages native vegetation.

What is classified as “native vegetation”?

The definition includes all types of native vegetation, including those found in aquatic and marine environments. It includes dead vegetation unless that dead vegetation is of a class declared by regulation to be excluded.

It also includes all native grasses, shrubs and trees but does not include intentionally sown native vegetation (such as that found in a garden, plantation or other crop).

Intentionally sown, planted or propagated vegetation

Plantations

The clearing laws only apply to “native vegetation”. The definition of “native vegetation” in the EP Act does not include native species in a plantation. A plantation is defined in section 3 of the EP Act as “one or more groups of trees, shrubs or plants intentionally sown, planted or propagated with a view to commercial exploitation”. The selling of flora from such plantations may require a licence under section 23D of the *Wildlife Conservation Act 1950*.

Other Intentionally Planted Vegetation

Under section 51A of the EP Act “native vegetation” does not include vegetation that is intentionally sown, planted or propagated unless:

- the vegetation was sown, planted or propagated as required under the EP Act or another written law; or
- it is declared to be native vegetation under the regulations.

Regulation 4 of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* describes some kinds of intentionally planted native vegetation that are considered “native vegetation” and which therefore require a clearing permit or exemption to clear.

Intentionally planted vegetation that requires a permit or exemption to clear

- (a) Vegetation that was planted and funded (wholly or partly):
- by a person who was not the owner of the land and it was planted for the purpose of biodiversity conservation or land conservation.
- (b) Vegetation that has:
- a conservation covenant or agreement to reserve under the *Soil and Land Conservation Act 1945*;
 - a covenant to conserve under the *National Trust of Australia (WA) Act 1964*;
 - a restrictive covenant to conserve under the *Transfer of Land Act 1983*;
 - some other form of binding undertaking to establish and/ or maintain the vegetation.

ENVIRONMENTALLY SENSITIVE AREAS

There are a number of areas around Western Australia where the exemptions under regulations **do not apply**. These areas are referred to as environmentally sensitive areas. These locations are generally areas where the vegetation has high conservation value and cannot be cleared.

Section 51B of the EP Act allows the Minister to declare environmentally sensitive areas. Once declared, the exemptions listed in the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* do not apply in these areas. This means that if you want to clear native vegetation in an environmentally sensitive area, you may need to apply for a clearing permit.

Maintenance areas of road or railway reserves that run through environmentally sensitive areas can still be cleared, providing:

- this area has been cleared before and the area cleared is not increased; and
- it is cleared in accordance with Regulation 5, Item 22 of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*. See the next section for more details.

For locations of environmentally sensitive areas visit <http://nvp.environment.wa.gov.au> or contact your local Department of Environment office.

It is important to note that a location can not be declared an environmentally sensitive area until:

- the determination of the flora, ecological community, site or area has been made public; or
- the owner, occupier or person responsible for the care and maintenance of the land has been notified of the area.

This is to ensure that people are aware of environmentally sensitive areas and do not clear them without knowing.

CLEARING FOR ROAD MAINTENANCE OR CONSTRUCTION

Due to the complexity of the exemptions, this guide deals specifically with circumstances where local government may need to clear native vegetation to either maintain or construct road infrastructure. There are a number of exemptions that apply for the maintenance and construction of SOME types of road infrastructure. These are explained below.

Clearing In Existing Transport Corridors- Regulation 5, Item 22

There is a temporary exemption for clearing in an existing stretch of road or railway. This exemption expires on the 7 July 2006 or until a code of practice under s.122A of the EP Act is issued, whichever is the earlier.

The exemption (regulation 5, item 22) allows clearing in accordance with Schedule 2 of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*.

This exemption only applies to:

- the Commissioner of Main Roads;
- the Public Transport Authority;
- the local government; or
- the person or the entity responsible for the stretch of road or railway.

Schedule 2 defines:

- the area or purpose for which clearing may be allowed; and
- the extent of the clearing that is permissible.

While this exemption does not generally apply in environmentally sensitive areas, there is an exemption for clearing the maintenance area of a stretch of road or railway, providing this area has been cleared before and it is cleared in accordance with regulation 5, item 22 of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*.

The “maintenance area” of a stretch of road or railway, means any area in the reserve for that stretch of road or railway that is lawfully cleared.

Please refer to the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* for the full version of this exemption.

Official versions of the regulations can be obtained by contacting the State Law Publisher (08) 9321 7688.

Clearing resulting from Infrastructure Maintenance Activities- Regulation 5, Item 23

This exemption allows a local government or a utility to clear to maintain existing infrastructure in accordance with Schedule 3 of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*. This exemption is valid until 7 July 2005 (a period of twelve months following the commencement of the clearing provisions in the EP Act).

This is a **twelve month** exemption for:

- maintenance of existing infrastructure;
- construction of infrastructure if the construction commenced before the 8 July 2004 (the date the clearing provisions of the EP Act were proclaimed);
- use of existing road or rail building sites used within the prior two years.

This exemption also includes an **eighteen-month exemption** for road realignment, road widening or construction of crossovers for existing roads (to expire 7 January 2006).

After these times, these clearing activities will require a clearing permit.

Schedule 3 lists the types of clearing activities that are can be carried out under this exemption and sets out conditions for the clearing.

This exemption does not apply in an environmentally sensitive area.

Please refer to the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* for the full version of this exemption. Official versions of the regulations can be obtained by contacting the State Law Publisher (08) 9321 7688.

CLEARING IN COUNTRY AREAS WATER SUPPLY CATCHMENTS

In order to protect current and future potable water supplies, additional controls on clearing vegetation apply to six catchments in the South West:

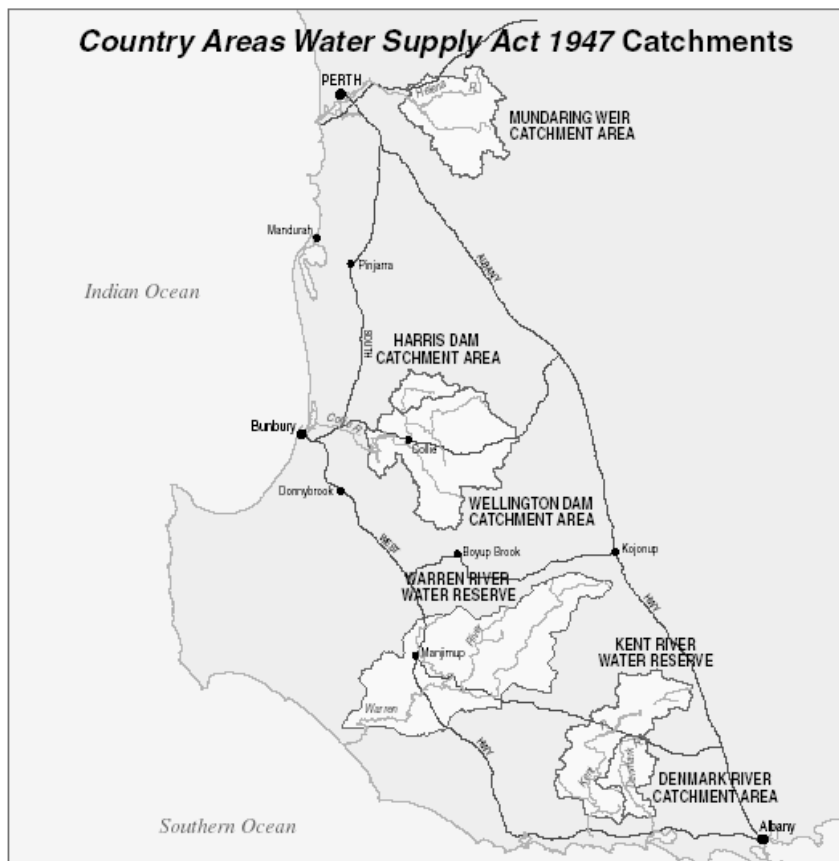
- Warren River Water Reserve
- Kent River Water Reserve
- Mundaring Weir Catchment Area
- Wellington Dam Catchment Area
- Denmark River Catchment Area
- Harris River Dam Catchment Area

Clearing in these catchments has been controlled since the mid 1970s. This was implemented to protect the quality of existing and potential water supply catchments that were prone to salinisation.

Previously, a licence to clear under the *Country Areas Water Supply Act 1947* was required to clear vegetation in these areas.

If a clearing permit under the EP Act has been issued, it is not necessary to also obtain a licence under the *Country Areas Water Supply Act* unless compensation for the refusal of a licence has been paid to a previous applicant.

If a local government proposes to clear in these special areas, they must check with their local Department of Environment office about what clearing activities require a *Country Areas Water Supply Act* licence.



APPLYING FOR A CLEARING PERMIT

A local government will need to apply for a clearing permit if there is an intention to clear native vegetation and the clearing cannot be carried out under an exemption.

A clearing permit is a legal document, giving the holder authorisation to clear vegetation. It may contain conditions and restrictions relating to the activities authorised by the permit.

There are two types of clearing permits - an area permit and a purpose permit.

Once it has been identified that a clearing permit is required, the correct application form must be completed. If there are concerns about which permit to apply for, the DoE local office can be contacted for advice.

Timelines for applications

A permit from the DoE authorising the clearing of native vegetation must be obtained prior to commencing clearing.

A detailed assessment is conducted relating to the vegetation proposed to be cleared and it may take up to 15 weeks or sometimes longer (assuming adequate information is available) for a decision to be made on the application, depending on the nature and scale of the proposed clearing.

This means that local governments must incorporate the need for a clearing permit in the planning processes that occur before native vegetation is cleared, to ensure that the application for a permit does not cause significant delays in scheduled works programs.

The Department of Environment is legally bound to conduct a full assessment of the vegetation proposed to be cleared.

Form C1: Application for a Clearing Permit (Area Permit)

In order to apply for an area permit, a local government must be the owner of the land as defined in the EP Act.

Under section 51A of the EP Act, an “owner” includes lessees for leases lawfully granted by the Crown and public authorities that have the care, control or management of land through vesting.

Local government should apply for an area permit if:

- they are the owner of the land, as defined in section 51A of the Environmental Protection Act; and
- they intend to clear a single, defined area of land for a project that has a known end date.

Examples of clearing by local government which would be eligible for an area permit:

- clearing native vegetation for an extraction site for road-building materials on land vested in the Shire.
- clearing native vegetation for development of a new community facility on a recreation reserve vested in the Shire.

Form C2 Application for a Clearing Permit (Purpose Permit)

Local government can apply for a purpose permit if there are a number of different clearing activities in different areas that may be undertaken over an extended period of time.

For example, a local government might have a works program that has identified a number of different roads that need upgrading in different parts of the local government boundary, as well as identifying places where new roads need to be built. These works may not be completed for a number of years.

In this situation, local governments can apply for a purpose permit which (once assessed), may grant approval to clear native vegetation in all the areas where new roads are being built or existing roads upgraded. A purpose permit can be granted to cover longer term works programs.

In order to apply for a purpose permit, the supporting information provided with the application must identify where the proposed clearing will be undertaken and give an indication of how much native vegetation will be cleared.

COMPLETING THE APPLICATION FORM

Part 1 Applicant

If a permit is granted, it will be issued to the owner of the land or the person doing the clearing, depending on the type of permit.

This section contains the contact details, including name, address, phone number, and fax number. To apply for a permit, an applicant must be:

- The owner of the land (area permit)
Under section 51A of the EP Act, an “owner” includes lessees for leases lawfully granted by the Crown and public authorities that have the care, control or management of land through vesting.

OR

- Acting on the owner’s behalf (area permit)
An applicant can be given written authority to apply on behalf of the land owner. Written authority usually refers to an Agent’s Authority or a Statutory Declaration expressly authorising you to act on behalf of the land owner. A copy of this authority must be attached with the application.

OR

- Likely to become the owner of the land (an undertaking)
If a person is in the process of transferring land into their name, they may apply for a permit. If approved, the permit will not be issued until the land transfer has been finalised.

OR

- The person intending to carry out the clearing (purpose permit).

Part 2 Land Details

An accurate description of the land must be provided indicating where the proposed clearing is to take place. If the clearing proposal extends over a number of areas these may also be included on the application form or on an attachment if there is insufficient room.

Part 3 Proposal

Under this section of the application you must provide the following information:

Total area of clearing proposed or number of individual trees to be removed (area permit only)

Write in the total area to be cleared or if individual trees are being cleared (for an area permit), the number of trees to be cleared. For most proposals, if an area is to be cleared, the total area should be provided in hectares (ha).

Method of clearing and proposed disposal of vegetation

Indicate how the vegetation will be cleared and disposed of (eg bulldozing, chaining, poisoning, chainsaw, burning, grazing).

Period for which clearing is required

Give an estimate of how long it will take to clear the vegetation. If a permit is granted, this information will help the DoE determine how long the permit will be issued for. Indicate the estimated time by writing the proposed start date and completion date of the clearing.

Purpose of clearing

Indicate the purpose of the proposed clearing. For example, clearing for the construction or realignment of a road.

Additional information

If you can provide specific details for each area proposed to be cleared or retained it will help with the assessment of your application. This information could include:

- the dominant types of vegetation, for example jarrah-marri forest, the common species of trees, shrubs, groundcovers, grasses and weeds;

- the condition of the vegetation, for example, previous disturbances such as clearing, grazing, thinning, logging, ring barking, burning, insecticide spraying, existence of weeds and feral animals;
- type of soils, for example, deep yellow sands, cracking clays, light red soils, floodplain soils, red/brown earth;
- type of landforms/landscape features including slope gradient/topographic contours, such as floodplains, ridgelines, sideslopes;
- drainage including both named and unnamed rivers, creeks and drainage depressions;
- special features such as wetlands, rocky outcrops, springs, soaks, billabongs, levee banks;
- land management problems such as gully erosion, waterlogging, salinity, weed invasion, and the extent of the problem (ha or metres); and
- land use history, such as prior clearing/logging, pasture improvement, cultivation, stocking rate, fires and other past disturbances.

Part 4 Fees

A fee must be submitted with all clearing permit applications. There is a sliding scale of fees for area permits and a set fee for purpose permits.

Item	Type of application	Fee
1.	Area permit with an area of less than 1 hectare	\$50.00
2.	Area permit with an area of between 1 and 10 hectares	\$100.00
3.	Area permit with an area of more than 10 hectares	\$200.00
4.	Purpose permit (no area specified)	\$200.00

Fees are also payable to apply to amend or surrender a clearing permit. They are as follows:

Item	Type of application	Fee
1.	Amendment of an area permit (not including increasing the area to be cleared on the permit)	\$50.00
2.	Amendment of an area permit to increase the area covered by the permit by less than 1 hectare	\$50.00
3.	Amendment to an area permit to increase the area covered by the permit by between 1 and 10 hectares	\$100.00
4.	Amendment of an area permit to increase the area covered by the permit by more than 10 hectares	\$200.00
5.	Amendment of a purpose permit	\$200.00
6.	Application to surrender a clearing permit	\$5.00

Fees can be paid by cheque or money order and the fee must be included with your application. Applications will not be processed without this fee. Cheques or money orders should be made payable to the Department of Environment.

Part 5 Declaration & Signature

A local government is a body corporate and so signs as a 'company'. A local government can affix a common seal, but the signature of an officer who receives a delegation to make such applications is also sufficient. The signature of the Chief Executive Officer is preferred, but it need not be them if another officer is formally authorised to do so.

Part 6 Application Checklist

This checklist outlines the supporting information that should be included with application. The checklist should be reviewed before submitting an application to ensure all the relevant information is included.

Part 7 How to lodge this application

Post or hand in the completed application with the appropriate fee to the address supplied on the application form.

SUPPORTING INFORMATION

Aerial Photograph or Locality Map

As part of an application, local governments must submit documents that indicate the area and location of where the clearing will take place. This helps the Department to make a detailed assessment of the proposal.

It is recommended that an aerial photograph is included with the application. If this is not possible, a locality map must be submitted.

The photograph or map should include the following details:

- the location and boundaries of the proposed clearing;
- a key which contains a north point and a scale;
- current land use of the area;
- area(s) to be cleared; and
- an explanation of any symbols and colours you use to identify different areas/activities.

While not required, where possible it will help if other information on natural features can be included, such as:

- how much vegetation is left and what type of condition it is in;
- watercourses and wetlands;
- soil types; and
- other geological features.

LODGING AN APPLICATION

Please send or deliver the application form with any supporting information and the appropriate fee to the address on the application form.

Please ensure you have completed all the relevant information before you submit your application.

INCOMPLETE APPLICATIONS

If an application is received that does not contain all the required information, the applicant will be contacted by mail requesting the relevant information, with a return date. This will result in a delay in accepting the application into the assessment stage

ASSESSMENT PROCESS

Once received, an application will go through a number of steps before a final decision to grant or refuse a permit is made.

Confirmation

A DoE officer will check over the application once it has been submitted to ensure all the required details have been provided.

The application details are then entered in to the Clearing Permit System or “CPS”, which is a database that records all the information about applications and permits. If the application submitted is complete, a letter confirming receipt of the application will be sent to the applicant.

Advertisement

There is a legal requirement that information about applications for clearing permits is published.

Some details of an application, once it has been checked and verified are made available to the public:

- on the Department of Environment web site at <http://nvp.environment.wa.gov.au>; and
- in the *West Australian* newspaper every Monday in the Public Notices section.

The details about applications that appear for public information are:

- the name of the applicant;
- whether the application is for an area or a purpose permit;
- a description of the land to which the application relates;
- the purpose of the proposed clearing; and
- the size of the area (or the number of trees) to be cleared (for an application for an area permit).

Individuals can also log onto the above web site at any time to find out what stage an application process is at.

Once a decision had been made to grant or refuse a permit, these details are also advertised on the web site and in the *West Australian*.

Inviting Submissions on Applications to Clear

The Department of Environment is required to invite submissions on an application from interested parties. This can include other government agencies, community groups or others that may be impacted by a proposal to clear.

Local governments may be invited by the Department to comment on applications to clear within their boundary.

Members of the general public can also make a submission to the Department on a clearing application if they wish. The Department must then take these submissions into account when assessing the application.

Stage 1 Assessment

Once applications have been entered into the system and advertised, they are forwarded on to the relevant regional office. It is the officer in the region that will carry out the Stage 1 assessment.

The DoE uses existing information and studies as well as advice from other government agencies to assess an application against a set of principles contained in Schedule 5 of the EP Act (see below for more information on these principles).

If a site visit is required, the local government may be contacted by a DoE officer who will request a time to visit the area and discuss the application. To assist with the assessment, sometimes officers from the Department of Conservation and Land Management or the Department of Agriculture may attend with, or instead of, a DoE officer

Principles in the Environmental Protection Act

There are ten principles related to native vegetation in the EP Act. These principles provide a guide for when native vegetation should not be cleared. The Department of Environment must consider these principles in making a decision on whether or not to issue a clearing permit.

The DoE has set out the minimum requirements and standards for addressing each of the ten principles in detail in its assessment methodology. This is available by contacting your local Native Vegetation Officer.

Native vegetation should not be cleared if:

- (a) it comprises a high level of biological diversity;
- (b) it comprises the whole or a part of, or is necessary for the maintenance of, a significant habitat for fauna indigenous to Western Australia;
- (c) it includes, or is necessary for the continued existence of, rare flora;
- (d) it comprises the whole or a part of, or is necessary for the maintenance of a threatened ecological community;
- (e) it is significant as a remnant of native vegetation in an area that has been extensively cleared;
- (f) it is growing in, or in association with, an environment associated with a watercourse or wetland;
- (g) the clearing of the vegetation is likely to cause appreciable land degradation;
- (h) the clearing of the vegetation is likely to have an impact on the environmental values of any adjacent or nearby conservation area;
- (i) the clearing of the vegetation is likely to cause deterioration in the quality of surface or underground water; or
- (j) clearing the vegetation is likely to cause, or exacerbate, the incidence of flooding.

Stage 2 Assessment- Providing Further Information

If there is not enough information on a particular principle to decide whether to approve or refuse a permit, the Department can ask the applicant to provide more information so it can consider the principle in detail. This is referred to as a Stage 2 Assessment.

Only a select number of applications will require a Stage 2 Assessment.

A Stage 2 Assessment may often involve employing a qualified person to collect and analyse the information. An example is where the DoE might require more information about some rare vegetation that might be present. The DoE might request that a spring flora survey be carried out.

Negotiation/Discussion

The assessment process may include discussion and negotiation between the applicant and the DoE relating to the proposed clearing. Once the assessment and any negotiations are complete, a decision is made to grant or refuse the permit to clear.

Decision

A permit to clear native vegetation is granted by the Chief Executive Officer (CEO), or a delegated authority, of the DoE.

Before a decision is made, consideration is given to:

- the clearing principles in Schedule 5 of the *Environmental Protection Act*;
- submissions from public authorities and interested persons;
- planning instruments such as a town planning scheme, statement of planning policy or local planning strategy; and
- any other matter the CEO considers relevant.

If a permit is granted, it will contain conditions and restrictions on activities that may occur under the permit, including a set time the permit will be valid for. These conditions and restrictions will often be negotiated with the applicant during the assessment stage. If an applicant is unhappy with the conditions and restrictions placed on the permit, the decision can be appealed.

APPEAL RIGHTS

Appeals may be lodged within 28 days by the applicant or a third party, if they are:

- aggrieved by a refusal to grant a permit; or
- aggrieved by the conditions or restrictions placed on the permit; or
- aggrieved by the amendment of, or revocation or suspension of a permit.

A person who disagrees with the decision to grant a permit may lodge an appeal within 21 days.

An appeal must be lodged with the Minister for the Environment, in writing, setting out the grounds of that appeal. The Office of the Appeals Convenor will administer the appeal and conduct an inquiry, recommending appropriate action to the Minister.

Appeals must be in writing and posted to:

Office of the Appeals Convenor
13th Floor, Allendale Square
77 St Georges Terrace
PERTH WA 6000

Alternatively, you can lodge your appeal by fax on (08) 9221 8244.

Further information is available from <http://www.appeals.dpc.wa.gov.au/> or by contacting the Office of the Appeals Convenor on (08) 9221 8711.

YOUR OBLIGATIONS

Once granted a permit to clear, a permit holder must:

- comply with the conditions and restrictions on the permit;
- notify DoE of any changes to circumstances, such as change of address; and
- keep the permit in a safe place, it is a legal document.

If during the term of the permit the holder is unable to comply with the permit, the holder must contact a Native Vegetation Officer of the DoE immediately to discuss the issue. Audits may be conducted during and on completion of the clearing project and penalties exist for non compliance.

Frequently Asked Questions

From a Local Government Perspective

The Department of Environment has responded to a number of questions by local government about how the regulations and exemptions operate. These responses and the exemption that they refer to are replicated below.

CLEARING RESULTING FROM ACCIDENTS OR TO REDUCE DANGER

Regulation 5, Item 2

Does this regulation allow local government to clear road reserves to a standard identified in the Main Roads WA Guidelines to accommodate heavy vehicle traffic on their roads as such clearly would be considered necessary to reduce danger for the purpose of preventing eminent danger to human life?

No. Compliance with general guidelines is not necessarily clearing to prevent imminent danger to human life or health. Regulation 5, Item 2 applies to such things as a tree damaged by lightning and therefore liable to fall and other emergencies and specific risks.

CLEARING FOR FIRE HAZARD REDUCTION

Regulation 5 Item 3

Clarification is required as to whether burning during the restricted burning period with a permit is allowable under these regulations?

Burning within the restricted or prohibited period is allowed with a permit issued by a Bush Fire Control Officer under the *Bush Fires Act 1954*. This exemption (and others relating to clearing allowed or required under a written law) are contained in Schedule 6 of the *Environmental Protection Act*. The legislation and the regulations must be read together to gain an understanding of the way the laws work.

CLEARING FOR FIREWOOD

Regulation 5, Item 5

As local governments are considered the owners of road reserves and other reserves under their control throughout the legislation, does this item then allow the local government to collect firewood themselves from their reserves, or provide approval for anyone else to collect fire wood from their reserves?

Although under the *Environmental Protection Act*, local governments could collect firewood for non-commercial purposes in accordance with this item for either themselves or give written permission for others to do so, a licence is required from CALM under the *Wildlife Conservation Act 1950* as the road reserve is Crown land.

CLEARING TO PROVIDE FENCING AND FARM MATERIALS

Regulation 5, Item 6

Does Item 6(c) refer to 1ha per location or lot, or 1ha per owner?

The term “property” is defined in the regulations and means an area managed as a single property, whether or not it is made up of a number of properties held under separate titles.

CLEARING BY LICENSED SURVEYORS

Regulation 5, Item 9

Does the surveying of a new road, or road realignment, fit into this section? If so can the surveyor authorise a local government authority to clear vegetation on their behalf for them to undertake the survey work?

No. According to the Department for Planning and Infrastructure, standard survey marks are geodetic stations which establish a framework from which other surveying can be done. Authorised surveys relate to the creation of lots.

CLEARING ALONG A FENCE LINE – ALIENATED LAND

Regulation 5, Item 10

How should local government authorities deal with the situation where they are requested to undertake private works on private land, who is responsible in determining if 1 hectare has been exceeded during a particular financial year by the land owner as an accumulated total of other limited clearing on their land during this period of time?

Should local government authorities insist that private work request forms are structured in such a manner that the land owner exempts the local government authority from any litigation, or will DoE pursue prosecution against both the land owner and the Shire who undertook the clearing work on the land owners behalf in the instance of any breach of the regulations?

Like many other exemptions, the owner (which for local roads is the local government authority) may give prior authority (this needs to be documented, for example by letter or through a notice) for another person to undertake the works. The same for private property is also true, namely that the private property owner could give prior authority to the local government to carry out work.

Legally, either the person undertaking the clearing or the owner could be responsible for exceeding the 1 hectare (ha) per financial year, depending on the circumstances. For example, if local government carried out the clearing in accordance with a written authority from the land owner (and the clearing was less than 1 ha), and the land owner had already cleared one hectare for the purposes allowed in regulations, the land owner would be responsible. The Department of Environment's enforcement policy considers such issues when determining what action, if any, should be taken for a breach of regulations.

It is not possible to simply exempt oneself from prosecution. The DoE will look at the circumstances when undertaking any investigation. The Shire would need to seek its own legal advice as to whether there are any arrangements that it could make to reduce the likelihood of being liable.

CLEARING ALONG A FENCE LINE – CROWN LAND

Regulation 5, Item 11

Do the regulations allow a person other than the local government authority to clear 1.5m into a road reserve when a landowner is constructing or maintaining a fence line without any prior approval (written or verbal) being obtained from the local government authority?

It is not possible to allow adjacent land owners to clear without prior authority from the local government authority. In addition, any clearing under the regulations must consider whether the area is part of an environmentally sensitive area as such clearing would require a permit. Although it may be legal to use a notice published in a newspaper to provide the prior authority, there are possible issues with this. The notice would need to specify which roads the notice applied to, in order to ensure that roads not under the control of the local government were not inadvertently cleared. The local government may also be legally exposed should a landowner clear an environmentally sensitive area.

A better solution may be for the local government to publish a notice suggesting that landowners who wish to clear may do so if they contact the local government. Local government could then check the area in question for environmentally sensitive areas, and give verbal approval if none exists. This could be followed up with written confirmation. It is suggested that local governments prepare a standard letter to facilitate this.

Where local government intends to clear an area greater than 1.5m on the road reserve to maintain a fence line, this would need to be part of a permit application.

CLEARING FOR VEHICULAR TRACKS

Regulation 5, Item 12

Clause 12(a) refers to "the clearing for a track is no wider than necessary" Who is to determine what is necessary or unnecessary in this instance?

"Necessary" is determined by what a reasonable person would determine, based on the usage of the track (e.g. what type of vehicle). Clause 12(b) is part of the test of what is necessary. If clause 12(b) is simply not possible then the restriction would not apply, as it refers to could be used for the purpose to which the track is intended.

CLEARING ALONG A FENCE LINE

Regulation 5, Items 10 & 11

Can a land owner clear either side of the fence line both into a road reserve and on their own land to maintain their fence; if so is the 1.5 metre maximum into Crown land still the condition of this item?

The land owner of the private property is neither the owner nor the occupier of the road reserve and therefore must obtain the prior authority of the local government to undertake the clearing.

The clearing can be what was lawfully cleared within the previous 10 years so it may be more than 1.5m provided that this can be reasonably proven.

ENVIRONMENTALLY SENSITIVE AREAS

This question relates specifically to clearing declared rare flora on road reserves. Section 51B of the EP Act allows the Minister to declare environmentally sensitive areas, where the exemptions under regulations do not apply. Currently, an area is declared as environmentally sensitive if it is within 50 meters of declared rare flora.

How does this clause affect the grading and construction (reconstruction) on road reserves, which have declared flora markers on them? Does it mean local government authorities can not go within 50 metres of the marker or 50 metres of the actual plant itself?

An environmentally sensitive area does not include the maintenance area of a road reserve that has been previously cleared. The “maintenance area” of a stretch of road or railway, means any area in the reserve for that stretch of road or railway that can be lawfully cleared.

However, it is an offence under the *Wildlife Conservation Act 1950* to disturb declared rare flora (DRF), regardless of whether the area is an environmentally sensitive area under the *Environmental Protection Act 1950*.

Declared rare flora markers are placed to assist local government to protect DRF. They do not affect any obligations under legislation. The area within 50m of the DRF is an environmentally sensitive area. The markers do not affect how this is defined.

Department of Environment Offices

Perth

Hyatt Centre
3 Plain Street, East Perth WA 6004
PO Box 6740 Hay Street
East Perth WA 6892
Phone (08) 9278 0300
Fax (08) 9278 0301
Email: nvp@environment.wa.gov.au
Web: www.environment.wa.gov.au

The following regions have Native Vegetation Officers and can provide information and advice on clearing native vegetation.

Albany

5 Bevan St, Albany WA 6330
PO Box 525, Albany WA 6331
Phone (08) 9842 5760
Fax (08) 9842 1204

Bunbury

35 - 39 McCombe Road, Bunbury WA 6230
(Halifax Industrial Area)
PO Box 261, Bunbury WA 6231
Phone (08) 9726 4111
Fax (08) 9726 4100

Carnarvon

211 Robinson St, Carnarvon WA 6701
PO Box 81, Carnarvon WA 6701
Phone (08) 9941 4921
Fax (08) 9941 4931

Geraldton

81 Forrest St, Geraldton WA 6530
PO Box 73, Geraldton WA 6531
Phone (08) 9964 5978
Fax (08) 9964 5983

Kalgoorlie

Viskovich House
377 Hannan Street
Kalgoorlie WA 6430
Phone (08) 9021 3243
Fax (08) 9021 3529

Kununurra

Lot 225 Bandicoot Dr, Kununurra WA 6743
PO Box 625, Kununurra WA 6743
Phone (08) 9166 4100
Fax (08) 9168 3174

Mandurah

Suite 8, Sholl House
21 Sholl St, Mandurah WA 6210
PO Box 332, Mandurah WA 6210
Phone (08) 9550 4222
Fax (08) 9581 4560

Northam

254 Fitzgerald St, Northam WA 6401
PO Box 497, Northam WA 6401
Phone (08) 9622 7055
Fax (08) 9622 7155

Swan Goldfields- (Victoria Park)

7 Ellam Street
Victoria Park WA 6100
Phone: (08) 6250 8000
Fax: (08) 6250 8050

The following offices can provide application forms and basic information, but do not have Native Vegetation Officers.

Busselton

62 Kent Street
Busselton WA 6280
Phone: (08) 9754 4331
Fax: (08) 9754 4335

Denmark

Suite 1, 55 Strickland St, Denmark WA 6333
Phone (08) 9848 1866
Fax (08) 9848 1733

Karratha

Lot 980 Cherratta Rd, KIE Karratha WA 6714
PO Box 836, Karratha WA 6714
Phone (08) 9144 2000
Fax (08) 9144 2610

Manjimup

52 Bath St, Manjimup WA 6258
Phone (08) 9771 1878
Fax (08) 9771 8108