

South Australia

# **Native Vegetation Regulations 2016**

under the *Native Vegetation Act 1991*

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**Part 1—Preliminary**

**1—Short title**

These regulations may be cited as the *Native Vegetation Regulations 2016*.

**2—Commencement**

These regulations come into operation on the day on which they are made.

### 3—Interpretation

In these regulations, unless the contrary intention appears—

**Act** means the *Native Vegetation Act 1991*;

**approved form** means a form approved by the Council;

**building** means a building or structure that is permanently fixed to land so that it cannot be moved without dismantling or destroying it and—

- (a) includes a transportable building if the building is connected to a sewage system or a septic tank and then is not moved after it is first connected to that sewage system or septic tank; but
- (b) does not include a building or structure erected or placed on land in contravention of the *Development Act 1993* or a corresponding previous enactment;

**bushfire management plan** means a—

- (a) a plan prepared by a bushfire management committee for its bushfire management area as required under section 72B of the *Fire and Emergency Services Act 2005*; or
- (b) a plan for bushfire prevention prepared by a district bushfire prevention committee under the *Fire and Emergency Services Act 2005*, as in force from time to time;

**Development Plan** means a Development Plan under the *Development Act 1993*;

**dwelling** means a building or part of a building used as a self-contained residence;

**fence** means a fence consisting of posts and wire fixed permanently to land and designed for the purpose of controlling access by people or the movement of animals;

**heritage agreement** means a heritage agreement under the Act or a heritage agreement that was entered into in compliance with a condition of consent to clear native vegetation under the repealed Act;

**infrastructure** means—

- (a) the infrastructure, equipment, structures, works and other facilities used in or in connection with the supply of water or electricity, gas or other forms of energy, the provision of telecommunications, or the drainage, removal or treatment of waste water or sewage; or
- (b) roads and their supporting structures or works; or
- (c) ports, wharfs, jetties, railways, trams and busways,

and includes the following:

- (d) flood mitigation works;
- (e) an airstrip;
- (f) a shipping channel;
- (g) a public reservoir;

**management agreement** means a management agreement under section 25D of the Act;

**Mining Act** means the *Mining Act 1971*, the *Opal Mining Act 1995*, the *Petroleum and Geothermal Energy Act 2000*, the *Offshore Minerals Act 2000* or the *Roxby Downs (Indenture Ratification) Act 1982*;

**mitigation hierarchy**—see regulation 5;

**natural resources** has the same meaning as in the *Natural Resources Management Act 2004*;

**NRM region** has the same meaning as in the *Natural Resources Management Act 2004*;

**private mine** means land declared under the *Mining Act 1971* to be a private mine;

**regional NRM board** has the same meaning as in the *Natural Resources Management Act 2004*;

**revoked regulations** means the *Native Vegetation Regulations 2003*;

**SACFS** means the South Australian Country Fire Service;

**SASES** means the South Australian State Emergency Service;

**SAMFS** means the South Australian Metropolitan Fire Service.

#### 4—Definition of native vegetation—dead plants

For the purposes of paragraph (a) of the definition of **native vegetation** in section 3(1) of the Act, the class of plants, or parts of plants, comprising trees of a species indigenous to South Australia—

- (a) that have a trunk circumference (measured at a point 300 millimetres above the base of the tree) of—
  - (i) in the case of a tree located on Kangaroo Island—1 metre or more; or
  - (ii) in any other case—2 metres or more; and
- (b) that provide or have the potential to provide, or are a part of a group of trees or other plants (whether alive or dead) that provide or have the potential to provide, a habitat for animals of a listed threatened species under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth,

is declared to be included in that definition.

#### 5—Mitigation hierarchy

The mitigation hierarchy is as follows:

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

- (c) *rehabilitation or restoration*—measures should be taken to rehabilitate ecosystems that have been degraded, and to restore ecosystems that have been destroyed, by impacts of clearance of native vegetation that cannot be avoided or minimised;
- (d) *offset*—any significant adverse impact on native vegetation or ecosystems that cannot be avoided or minimised should be offset by the achievement of a significant environmental benefit that outweighs that impact.

## Part 2—Guidelines

### 6—Guidelines to be prepared by Council

Pursuant to section 25(1)(e) of the Act, the Council is required to prepare draft guidelines in relation to the following:

- (a) clearing vegetation that is growing or is situated on land for the purpose of controlling pests on the land;
- (b) clearing vegetation that is having an adverse effect on natural resource management on land;
- (c) clearing vegetation that is growing or is situated on a road reserve;
- (d) clearing vegetation in connection with making changes to ongoing grazing practices.

## Part 3—Permitted clearance of native vegetation

### Division 1—Permitted clearance

#### 7—Permitted clearance

- (1) Pursuant to section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared as set out in this Part.
- (2) A person undertaking, or intending to undertake, clearance of native vegetation under this Part must have regard to, and endeavour to give effect to, the mitigation hierarchy.

### Division 2—Permitted clearance without conditions

#### 8—Permitted clearance without conditions

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

## **Division 3—Fire hazard reduction**

### **9—Clearance for fire hazard reduction**

- (1) Native vegetation may be cleared in the circumstances set out in Schedule 1 Part 2 Division 1.
- (2) Native vegetation may be cleared in any of the circumstances set out in Schedule 1 Part 2 Division 2 if—
  - (a) clearance of the vegetation is undertaken in accordance with the written approval of the Chief Officer of SACFS and any applicable bushfire management plan; and
  - (b) the Council has been notified of the proposed clearance in the approved form.
- (3) The operation of this regulation extends to native vegetation that is growing or is situated on land that is subject to a heritage agreement or a management agreement if a provision of Schedule 1 Part 2 setting out circumstances in which vegetation may be cleared specifies that the provision applies to such vegetation.

### **10—Approval by Chief Officer**

- (1) The Chief Officer of SACFS must not grant an approval under this Division unless he or she is satisfied that the clearance of native vegetation is reasonably required or appropriate for the purpose of fire prevention or control.
- (2) In considering whether to grant an approval under this Division, the Chief Officer of SACFS must have regard to—
  - (a) any applicable bushfire management plan; and
  - (b) any guidelines made or approved by the Council for the purposes of this Division.

## **Division 4—Vegetation management**

### **11—Vegetation management (management plans)**

- (1) Native vegetation may be cleared in any of the circumstances set out in Schedule 1 Part 3 if the clearance is undertaken with the written approval of the Council and in accordance with—
  - (a) a management plan relating to the clearance that is—
    - (i) prepared in accordance with applicable guidelines adopted by the Council under section 25 of the Act; and
    - (ii) approved by the Council; or
  - (b) relevant guidelines approved by the Council under section 25 of the Act, or both, as determined by the Council.
- (2) The operation of this regulation extends to native vegetation that is growing or is situated on land that is subject to a heritage agreement or a management agreement if a provision of Schedule 1 Part 3 setting out circumstances in which vegetation may be cleared specifies that the provision applies to such vegetation.

## Division 5—Risk assessment

### 12—Risk assessment

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

### 13—Clearance for major developments and projects

- (1) Clearance of native vegetation for the purposes of a development or project of a kind specified in Schedule 1 Part 4 is permitted only if it is undertaken in accordance with—
  - (a) the consent granted for the proposed development or project; and
  - (b) a management plan, approved by the Council for implementation, that results in a significant environmental benefit.
- (2) Subregulation (1)(b) does not apply if the owner of the land (or a person acting on his or her behalf) has made a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) or (6a) of the Act.

### 14—Clearance for mining and petroleum activities

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

### 15—Clearance for exploratory operations

- (1) Clearance of native vegetation for the purposes of exploratory operations of a kind specified in Schedule 1 Part 5 Division 2 is permitted only if it is undertaken in accordance with relevant guidelines approved by the Council under section 25 of the Act.

- (2) However, if there are no relevant guidelines, or if it is not possible for the applicant to undertake the operations in accordance with relevant guidelines, the clearance is permitted if—
  - (a) the clearance is undertaken in accordance with a management plan, approved by the Council for implementation, that results in a significant environmental benefit; or
  - (b) the person undertaking the operations makes a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) or (6a) of the Act.

### **16—Clearance for other activities**

- (1) Clearance of native vegetation for the purposes of activities of a kind specified in Schedule 1 Part 6 is permitted only if it is undertaken in accordance with the written approval of the Council.
- (2) An approval of the Council may be granted subject to such conditions as the Council thinks fit.
- (3) Without limiting the generality of subregulation (2), an approval under this regulation may be granted subject to a condition—
  - (a) that the clearance of native vegetation is to be undertaken in accordance with a management plan, approved by the Council for implementation, that results in a significant environmental benefit; or
  - (b) that the person undertaking the operations will make a payment into the Fund of an amount considered by the Council to be sufficient to achieve a significant environmental benefit in the manner contemplated by section 21(6) or (6a) of the Act.
- (4) Clearance of native vegetation for the purposes of activities of a kind specified in Schedule 1 Part 6 is permitted only if any conditions that apply to the approval are complied with.

### **17—Risk to biological diversity to be considered by Council**

When making a determination for the purposes of regulation 16 as to—

- (a) the information to be provided by an applicant for approval to clear land; or
- (b) whether approval should be granted and, if so, the conditions (if any) of the approval,

the Council must make an assessment of, and have regard to, the level of risk to biological diversity conservation presented by the clearance proposal.

## **Division 6—Miscellaneous**

### **18—Council approval**

- (1) An application to the Council for approval to clear native vegetation as required under this Part must be made in the approved form.

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- (2) For the purposes of this Part (and without limiting any other provision), the Council may—
- (a) require a person making an application to provide to the Council such information as the Council reasonably requires to determine the application; or
  - (b) direct that information to be provided to the Council be in a form determined by the Council (after consulting with any relevant person as the Council thinks fit); or
  - (c) direct that a person comply with any other requirement determined by the Council (including a requirement as to the form or content of any plan or other document).

**19—Matters to be considered by Council**

- (1) The Council must, when exercising a power or making a decision under this Part—
- (a) have regard to the mitigation hierarchy; and
  - (b) consider, and aim to minimise, potential impacts on biological diversity arising from any proposed clearance of native vegetation; and
  - (c) consider, and aim to minimise, potential impacts on soil, water and other natural resources arising from any proposed clearance of native vegetation; and
  - (d) take into consideration comments from agencies or bodies provided in response to any request for comment made by the Council; and
  - (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* of the Commonwealth; or
    - (ii) species listed as rare or threatened under the *National Parks and Wildlife Act 1972*; and
  - (f) consider the potential cumulative impact, both direct and indirect, that is reasonably likely result from a proposed clearance activity.

**Note—**

The Council is also obliged under section 14(2) of the Act to do the following when performing a function or exercising a power under the Act:

- take into account, and seek to further, the objects of the Act;
- take into account, and seek to further, the principles of clearance of native vegetation (insofar as they are relevant in the particular circumstances);
- take into account the provisions of the State NRM plan, and any other relevant NRM plan, under the *Natural Resources Management Act 2004*.

In addition, the Council must not act in a manner that is seriously at variance with the principles of clearance of native vegetation

- (2) The Council may, when considering an application under this Part for approval to clear vegetation, take into account the practicability and cost of any reasonable alternative to the proposed clearance.

**20—Significant environmental benefit**

- (1) If clearance of native vegetation that is growing or is situated on land is permitted under this Part subject to a condition requiring the achievement of a significant environmental benefit—
  - (a) the benefit is to be achieved by—
    - (i) establishing and managing native vegetation on land as specified by the Council; or
    - (ii) managing and protecting native vegetation that is growing or is situated on specified land; or
    - (iii) entering into a heritage agreement with the Minister under the Act in the terms specified by the Council for the management of specified native vegetation; or
    - (iv) taking action in accordance with Part 4A of the Act; and
  - (b) the Council must inform the Registrar-General in writing of the condition and must provide the Registrar-General with such further information as the Registrar-General requires to comply with subregulation (2).
- (2) The Registrar-General must note the condition against the relevant instrument of title for the land or, in the case of land not under the *Real Property Act 1886*, against the land.

**21—Time within which permitted clearance must be undertaken**

- (1) An approval given by the Council or the Chief Officer of the CFS for the purposes of this Part ceases to operate—
  - (a) 2 years after it is granted; or
  - (b) if the Council or Chief Officer specifies, when granting the approval, a longer period (which must not be more than 5 years after the approval is granted)—at the end of that period.
- (2) If clearance of native vegetation permitted under these regulations is to be undertaken in accordance with a management plan, the clearance must be commenced within 2 years of the day on which the plan is approved by the Council and undertaken within any time frame specified in the plan.

**22—Guidelines**

The Council may grant an approval under this Part in connection with a proposal to clear native vegetation on the condition that the clearance complies with specified guidelines, prepared by the Council, as in force when the approval is granted.

**23—Conditions of approval**

- (1) A condition imposed by the Council under this Part in connection with an approval granted in relation to clearance of native vegetation is binding on, and enforceable against—
  - (a) the person to whom the approval is granted; and
  - (b) all owners and subsequent owners of the land to be cleared and any other land to which the condition relates; and

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- (c) an occupier of the land to be cleared and any other person who acquires the benefit of the approval.
- (2) A person must not contravene or fail to comply with a condition imposed on an approval granted by the Council under this Part.  
Maximum penalty: \$10 000.

**Part 4—SA Motorsport Park****24—Clearance on SA Motorsport Park land**

- (1) Pursuant to section 27(1)(b) of the Act, native vegetation may, subject to any other Act or law to the contrary, be cleared if—
  - (a) the land on which the vegetation is situated is in the SA Motorsport Park; and
  - (b) the clearance is incidental to development that has been authorised under the *Development Act 1993*; and
  - (c) the clearance is undertaken in accordance with a management plan that has been approved by the State Coordinator-General appointed under the *Development Regulations 2008*; and
  - (d) the State Coordinator-General is satisfied, after taking into account the full nature and extent of clearance that is to be undertaken on the relevant land and any commitments that have been made with respect to the establishment, restoration or maintenance of native vegetation, that—
    - (i) there will be a significant environmental benefit on the land or within the same region of the State; or
    - (ii) the owner of the land (or a person acting on his or her behalf) has, on application to the State Coordinator-General to proceed with clearing the vegetation in accordance with this provision (or regulation 5(1)(zo) of the revoked regulations), made a payment into the Fund or, if the State Coordinator-General is satisfied that it is appropriate in the circumstances, agreed to make a payment into the Fund, of an amount considered by the State Coordinator-General to be sufficient to achieve a significant environmental benefit, in the manner contemplated by section 21(6) of the Act, which outweighs the value of retaining the vegetation.
- (2) In this regulation—

*SA Motorsport Park* means the land within the shaded area in the map set out in Schedule 2 and described as the "SA Motorsport Park Development Site".

**Part 5—Application for consent****25—Application for consent**

- (1) For the purposes of section 28(3)(b)(ii)(A) of the Act, the prescribed number of copies is 1.
- (2) For the purposes of section 28(3)(b)(ii)(C) of the Act, the prescribed fee is \$573 plus the fee referred to in subregulation (3).

- (3) The fee payable by an applicant for consent to clear native vegetation for the preparation of the report referred to in section 28(3)(b)(ii)(A) of the Act is the Minister's estimate of the reasonable cost of preparing a report of that kind determined after consultation with the Council.
- (4) The Council may remit payment of, or refund, the whole, or part, of a fee payable or paid in relation to an application (including a fee for a report under section 28(3)(b)(ii)(A) of the Act).
- (5) For the purposes of section 28(5) of the Act, any agency, instrumentality, person or body approved by the Council as an entity that may prepare a report of the relevant kind is specified.

## **Part 6—Miscellaneous**

### **26—Interest**

- (1) Interest accrues from the end of the period referred to in section 31D(4)(a) or 31E(6)(a) of the Act at the prime bank rate for the relevant financial year.
- (2) Interest accrues on unpaid interest at 6 monthly intervals from the end of the period referred to in subregulation (1).
- (3) In this regulation—

*prime bank rate* for a particular financial year means the corporate loan reference rate applied by the Commonwealth Bank of Australia for corporate lending on the first trading day of the Bank in that financial year.

### **27—Prescribed form (section 33C(8) of Act)**

For the purposes of section 33C(8) of the Act, the form set out in Schedule 3 is prescribed.

### **28—Service of notices**

Notice may be served under the Act on a land owner—

- (a) personally; or
- (b) by posting it to the land owner at the address of the land owner last known to the person or body serving the notice.

### **29—False or misleading information**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished under the Act or these regulations.

Maximum penalty: \$10 000.

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

### Part 1—General (regulation 8)

#### 1—Vegetation within 10 metres of existing building

- (1) Clearance of vegetation that is growing or is situated within 10 metres of an existing building for the purpose of maintaining the building.
- (2) Subclause (1)—
  - (a) applies to vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement; but
  - (b) does not apply to vegetation that is situated or growing on land within the River Murray Floodplain Area.
- (3) In this clause—

*River Murray Floodplain Area* means the River Murray Protection Area so designated under regulation 4 of the *River Murray Regulations 2003*.

#### 2—Maintenance of infrastructure

- (1) Clearance of vegetation where—
  - (a) the clearance is incidental to—
    - (i) the repair or maintenance of infrastructure; or
    - (ii) repair or maintenance work of the Crown; and
  - (b) the vegetation to be cleared—
    - (i) is located in the vicinity of the structure that is being repaired or maintained in an area in which vegetation was previously cleared in connection with the construction, repair or maintenance of the structure; and
    - (ii) consists only of plants or parts of plants that have grown or regrown since that earlier clearance.
- (2) Subclause (1) applies to vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement

#### 3—Maintenance of dam

Clearance of vegetation where—

- (a) the clearance is incidental to the repair or maintenance of an existing dam; and
- (b) the vegetation to be cleared—
  - (i) is located in the vicinity of the dam in an area in which vegetation was previously cleared in connection with the construction, repair or maintenance of the dam; and

- (ii) consists only of plants or parts of plants that have grown or regrown since that earlier clearance.

#### **4—Clearance under the *Electricity Act 1996* or *Emergency Management Act 2004***

- (1) Clearance of vegetation—
  - (a) undertaken as part of the duty of an electricity entity under Part 5 of the *Electricity Act 1996*; or
  - (b) incidental to any repair or maintenance work of an electricity entity within the meaning of the *Electricity Act 1996*; or
  - (c) by the State Co-ordinator or an authorised officer acting under section 25 of the *Emergency Management Act 2004*.
- (2) Subclause (1) applies to vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement

#### **5—Ongoing grazing practices**

Clearance of vegetation by grazing domestic stock on land in a manner and at a rate that will not cause permanent degradation of the native vegetation, provided that the manner and rate of grazing is consistent with the manner in which, and the rate at which, the land has previously been grazed by domestic stock of the same species during the previous 10 years.

#### **6—Safety of persons and property**

- (1) Clearance of vegetation comprising a plant exceeding 2 metres in height if—
  - (a) there is a danger that the plant will fall over or a limb or some other part of the plant will fall from it because of disease, wind damage or any other cause; and
  - (b) there is a real risk of personal injury or damage to property if that occurs; and
  - (c) it is not reasonably practicable to avoid the risk by avoiding the vicinity in which the plant is growing or is situated; and
  - (d) the state of the plant has been assessed by a person with expertise in the area of plant health, or by any other person acting in an emergency situation or in any other situation that gives rise to an immediate risk of personal injury or damage to property; and
  - (e) the clearance is confined to removing the limb or other part of the plant causing the danger and only extends to destroying the plant if that is necessary to remove the existing danger.
- (2) Subclause (1) applies to vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement.
- (3) Subclause (1) does not apply to clearance of vegetation on a road reserve, rail corridor or rail reserve unless—
  - (a) guidelines that apply to the clearance have been made under section 25 of the Act; and
  - (b) the clearance is undertaken in accordance with those guidelines.

**7—Vehicle tracks**

- (1) Clearance of vegetation for the purpose of establishing or maintaining an existing track that is not more than 5 metres in width for use by vehicles having at least 4 wheels, provided that—
  - (a) the track is reasonably required to provide access; and
  - (b) the clearance is limited to the extent reasonably required to achieve the relevant purpose; and
  - (c) there is no other practicable alternative (including, in the case of a new track, to the position of the track) that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared.
- (2) Subclause (1) applies to clearance of vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement if the clearance is undertaken for the purpose of maintaining (but not establishing) a track .
- (3) Subclause (1) does not apply to—
  - (a) clearance of vegetation on a road reserve; or
  - (b) clearance of vegetation established as a condition of a consent for clearance of vegetation; or
  - (c) clearance that would be contrary to—
    - (i) a condition of a consent for clearance of vegetation; or
    - (ii) a condition imposed in connection with clearance of vegetation permitted under these regulations; or
    - (iii) a condition in respect of clearance permitted under the revoked regulations.

**8—Walking tracks**

- (1) Clearance of vegetation for the purpose of establishing or maintaining a walking track that is not more than 1 metre in width, provided that—
  - (a) the track is used, or is genuinely expected to be used, only by pedestrians; and
  - (b) there is no other practicable alternative (including, in the case of a new track, to the position of the track) that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared.
- (2) Subclause (1) applies to clearance of vegetation on land that is subject to a heritage agreement or a management agreement.
- (3) Subclause (1) does not apply to—
  - (a) clearance of vegetation on a road reserve; or
  - (b) clearance of vegetation established as a condition of a consent for clearance of vegetation; or

- (c) clearance that would be contrary to—
  - (i) a condition of a consent for clearance of vegetation; or
  - (ii) a condition imposed in connection with clearance of vegetation permitted under these regulations; or
  - (iii) a condition in respect of clearance permitted under the revoked regulations.

## **9—Cultural activities**

- (1) Clearance of vegetation comprising the taking of a part of a plant by an Aboriginal person for non-commercial use by the person, or by another Aboriginal person, in accordance with Aboriginal culture and tradition.
- (2) In this regulation—

*Aboriginal person* means a person of Aboriginal descent who is accepted as a member by a group in the community who claim Aboriginal descent.

## **10—Fences**

- (1) Clearance of vegetation for the purpose of providing a strip of cleared land on either side or both sides of an existing fence or of a fence in the course of construction to provide access for the purpose of maintaining or establishing the fence, provided that—
  - (a) the fence is reasonably required to control access by people or the movement of animals; and
  - (b) the clearance is required to give reasonable access to the fence and is limited to the extent reasonably required to achieve that access; and
  - (c) there is no other practicable alternative (including, in the case of a new fence, to the position of the fence) that would involve no clearance or the clearance of less vegetation or the clearance of vegetation that is less significant or (if relevant) the clearance of vegetation that has been degraded to a greater extent than the vegetation proposed to be cleared; and
  - (d) if the fence is on the boundary of a person's land—
    - (i) the total width of the strip on either side of the fence is not more than 5 metres; but
    - (ii) if the land abuts a road reserve in the area of a council, the total width of the strip at any point where it falls within the road reserve is not more than 1 metre; and
  - (e) if the fence is not on the boundary of a person's land—the total width of the strip is not more than 5 metres.
- (2) Subclause (1) does not apply to—
  - (a) clearance of vegetation on a road reserve; or
  - (b) clearance of vegetation established in accordance with a condition of a consent for clearance of vegetation; or
  - (c) clearance that would be contrary to—

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- (i) a condition of a consent for clearance of vegetation; or
- (ii) a condition imposed in connection with clearance of vegetation permitted under these regulations; or
- (iii) a condition in respect of clearance permitted under the revoked regulations.

**11—Regrowth**

Clearance of vegetation where—

- (a) the land on which the vegetation is situated has been cleared lawfully within 5 years immediately before the proposed clearance occurs; and
- (b) the clearance is necessary to maintain the land so that it can continue to be used for the purpose for which, and to the extent to which, it had been used for that purpose within the immediately preceding 5 years; and
- (c) the vegetation to be cleared consists only of plants or parts of plants that have grown or have regrown in the immediately preceding 5 years.

**12—Firewood**

- (1) Clearance of vegetation that is solely for the purposes of providing firewood for use by the owner of the land on which the vegetation was growing or was situated for the purposes of domestic heating or cooking, provided that—
  - (a) the quantity of firewood provided by the clearance when aggregated with the quantity of firewood (if any) previously provided by clearance under this clause (or a previous corresponding provision) and not yet burnt does not exceed 6 cubic metres when calculated over the immediately preceding period of 2 years; and
  - (b) the vegetation has a stem diameter at 300 millimetres from the base of the plant of 200 millimetres or less; and
  - (c) in the case of living vegetation—the clearance does not kill the vegetation, does not prevent regrowth and is undertaken at least 300 millimetres above the base of the plant.
- (2) Subclause (1) applies to vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement if the terms of the heritage agreement or management agreement permit clearance for the purpose set out in that subclause.
- (3) Subclause (1) does not apply to—
  - (a) clearance of vegetation established in accordance with a condition of a consent for clearance of vegetation; or
  - (b) clearance that would be contrary to—
    - (i) a condition of a consent for clearance of vegetation; or
    - (ii) a condition imposed in connection with clearance of vegetation permitted under these regulations; or
    - (iii) a condition in respect of clearance permitted under the revoked regulations.

**13—Plant and animal control**

Clearance of vegetation (other than vegetation on a road reserve, rail corridor or rail reserve) undertaken in compliance with an obligation under the *Natural Resources Management Act 2004* to destroy or control animals or plants if it is not possible to undertake the clearance without at the same time destroying, damaging or otherwise clearing the vegetation.

**14—Native vegetation causing management problems**

Clearance of vegetation that is having a detrimental effect on the management of natural resources and is of a species and in a location specified in guidelines prepared by the Council in accordance with section 25 of the Act.

**15—Taking of seeds and specimens**

Clearance of vegetation comprising—

- (a) the taking of a specimen; or
- (b) the taking of—
  - (i) a cutting from a plant for propagation; or
  - (ii) such part of a plant that is required in order to obtain the seeds of the plant,

provided that the clearance does not cause substantial damage to the plant.

**16—Cultana training area**

- (1) Clearance of vegetation that is growing or is situated in the Cultana Training Area, provided that the clearance is carried out by or on behalf of, or with the authority or permission of, the Commonwealth Department of Defence or an arm of the Australian Defence Force.

- (2) In this clause—

***Cultana Training Area*** means the land comprised by the following:

- (a) the Allotment comprising Pieces 81, 82 and 83 in Deposited Plan 85852 Out of Hundreds (Port Augusta);
- (b) Allotment 6 in Deposited Plan 88907 Hundred of Handyside County of Manchester and Out of Hundreds (Port Augusta);
- (c) Sections 4, 13, 14 and 15, Hundred of Jenkins County of Manchester;
- (d) Allotment 7 in Deposited Plan 29397 Out of Hundreds (Port Augusta);
- (e) the Allotment comprising the Pieces 8, 9, 10 and 11 in Deposited Plan 29397 Out of Hundreds (Port Augusta);
- (f) Allotment 68 in Deposited Plan 85851 Hundred of Cultana County of York;
- (g) Allotment 72 in Deposited Plan 85851 Hundred of Cultana County of York;
- (h) the Allotment comprising Pieces 30, 31 and 32 in Deposited Plan 85850 Out of Hundreds (Whyalla), Out of Hundreds (Port Augusta) and Hundred of Cultana County of York;

- (i) Allotment 67 in Deposited Plan 93251, Hundred of Cultana County of York and Out of Hundreds (Port Augusta).

## **Part 2—CFS approval—fire hazard reduction**

### **Division 1—Fire hazard reduction 1 (regulation 9(1))**

#### **17—Fire prevention and control**

- (1) Clearance of vegetation situated or growing within 20 metres of a dwelling.
- (2) Clearance of vegetation situated or growing along an existing fence-line to establish or maintain a fuel break where the total width of the fuel break does not exceed 5 metres.
- (3) Clearance of vegetation otherwise authorised by, and carried out in compliance with, a bushfire management plan applying to the area in which the vegetation is situated or growing.
- (4) This clause applies to vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement.

#### **18—Clearance for the purposes of the *Fire and Emergency Services Act 2005***

- (1) Clearance of vegetation undertaken by, or in accordance with a direction or determination of—
  - (a) an officer of SAMFS exercising a power conferred under section 42 of the *Fire and Emergency Services Act 2005*; or
  - (b) an officer of SACFS exercising a power conferred under section 82 or 97 of the *Fire and Emergency Services Act 2005*; or
  - (c) an officer of SASES exercising a power conferred under section 118 of the *Fire and Emergency Services Act 2005*.
- (2) Subclause (1) applies to vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement.

### **Division 2—Fire hazard reduction 2 (regulation 9(2))**

#### **19—Fuel reduction**

- (1) Clearance of vegetation (other than clearance that falls within the ambit of Part 1 clause 1 or Part 3) for the purpose of reducing combustible material on land where reasonably required for a purpose related to fire prevention or control.
- (2) Subclause (1) applies to vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement.

#### **20—Fuel breaks**

- (1) Subject to subclause (2), clearance of vegetation (other than clearance that falls within the ambit of Part 1 clause 1 or Part 3) as reasonably required to provide a fuel break not exceeding 20 metres in width on a property that is in the area of a rural council and is used principally for primary production.

- (2) Clearance of vegetation to provide a fuel break does not fall within the ambit of subclause (1) if any point of the proposed fuel break would be within 200 metres of land—
  - (a) that is sufficiently clear of vegetation so as to constitute a fuel break (other than a fuel break that runs approximately at right-angles to the proposed fuel break); and
  - (b) that provides comparable protection to the proposed fuel break.
- (3) Subclause (1) applies to vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement.
- (4) In this clause—

*rural council* has the same meaning as in the *Fire and Emergency Services Act 2005*.

**21—Fire access tracks**

- (1) Clearance of vegetation undertaken for the purpose of establishing or maintaining a fire access track.
- (2) Subclause (1) applies to vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement.
- (3) In this regulation—

*fire access track* means a track (not exceeding 15 metres in width) constructed for use by vehicles undertaking firefighting activities;

*firefighting* has the same meaning as in the *Fire and Emergency Services Act 2005*.

**Part 3—Management plans—vegetation management  
(regulation 11)****22—Roadside or rail corridor vegetation management**

Clearance of vegetation that is situated or is growing on land comprising a road reserve, a rail corridor, a rail reserve or a railway crossing undertaken by or on behalf of the person with the control and management of the land for the purpose of—

- (a) ensuring the safety of persons entering or passing the land, or of property on the land; or
- (b) controlling pests on the land; or
- (c) providing aesthetic improvement of the reserve, corridor or crossing.

**23—Maintenance of existing agriculture, forestry or farming**

Clearance of vegetation that is situated or is growing on land that has been consistently used for agricultural, forestry or primary production purposes as part of a commercial enterprise in the immediately preceding 10 years, provided that the clearance is undertaken for the purpose of maintaining the existing use of the land and will not cause permanent degradation or loss of native vegetation.

**24—Ecological restoration and management of vegetation**

- (1) Clearance undertaken for the purpose of conserving, managing or restoring native species, native vegetation or ecological processes, or for a related purpose.

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- (2) Subclause (1) applies to vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement.

**25—Grazing of domestic stock**

Clearance of vegetation by grazing domestic stock on land in a manner, and at a rate, that will not cause permanent degradation of the native vegetation on the land where Part 1 clause 5 does not apply because the manner and rate of grazing is not consistent with the manner in which, and the rate at which, the land has previously been grazed by domestic stock of the same species during the previous 10 years.

**Part 4—Major developments and projects under *Development Act 1993* (regulation 12)****26—Major projects**

Clearance of vegetation that is incidental to a proposed development to which section 48 of the *Development Act 1993* applies, provided that—

- (a) an environmental impact statement, public environmental report or development report, and an Assessment Report, relating to the development have been prepared under that Act; and
- (b) the Minister responsible for the administration of the *Development Act 1993* referred the environmental impact statement, public environmental report or development report to the Council for comment and report and—
  - (i) the Council provided comments which were included (wholly or substantially) in the relevant Assessment Report; or
  - (ii) the Council failed to provide comments within 8 weeks after receiving the Minister's invitation for comment and report; and
- (c) the Governor has granted his or her consent to the proposed development under section 48 of the *Development Act 1993*.

**Part 5—Mining and petroleum activities (regulation 12)****Division 1—Mining operations****27—Operations**

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

**Division 2—Exploratory activity****28—Exploration**

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

**Division 3—Mining operations approved before 2003****29—Mining operations approved before 2003**

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

- (a) is clearance that is envisaged or authorised by or under a program or approval under the relevant Act; or
- (b) is clearance that would reasonably be expected to have been required under the authorisation under the relevant Act taking into account the circumstances that existed immediately before 25 August 2003.

**Division 4—Private mines****30—Mining operations at private mines**

- (1) Clearance of vegetation incidental to mining operations at a private mine at which mining operations have not been discontinued for a period exceeding 12 months at any time after 21 November 1984.
- (2) Subclause (1) applies to vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement.

**Part 6—Other activities (regulation 12)****31—Works on behalf of Commissioner of Highways**

Clearance of vegetation incidental to work being undertaken by or on behalf of the Commissioner of Highways (other than repair or maintenance work of a kind referred to in Part 1 clause 2).

**32—New dwelling or building**

- (1) Clearance of vegetation required in order to erect a building or structure or other facility that is ancillary to a building, provided that any development authorisation required by or under the *Development Act 1993* has been obtained.
- (2) Subclause (1) does not apply to—
  - (a) clearance of vegetation established in accordance with a condition of a consent for clearance of vegetation; or
  - (b) clearance that would be contrary to—
    - (i) a condition of a consent for clearance of vegetation; or
    - (ii) a condition imposed in connection with clearance of vegetation permitted under these regulations; or
    - (iii) a condition in respect of clearance permitted under the revoked regulations.

**33—Infrastructure**

Clearance of vegetation—

- (a) incidental to the construction or expansion of a building or infrastructure where the Minister has, by instrument in writing, declared that he or she is satisfied that the clearance is in the public interest; or
- (b) required in connection with the provision of infrastructure or services to a building or proposed building, or to any place,

provided that any development authorisation required by or under the *Development Act 1993* has been obtained.

**34—Residential subdivision**

- (1) Clearance of vegetation in connection with the division of land for use for residential purposes (including clearance for the construction of roads and other infrastructure), provided that any development authorisation for the division of the land and for the use of the land for residential purposes required by or under the *Development Act 1993* has been obtained.
- (2) Subclause (1) does not apply to—
  - (a) clearance of vegetation established in accordance with a condition of a consent for clearance of vegetation; or
  - (b) clearance that would be contrary to—
    - (i) a condition of a consent for clearance of vegetation; or
    - (ii) a condition imposed in connection with clearance of vegetation permitted under these regulations; or
    - (iii) a condition in respect of clearance permitted under the revoked regulations.

**35—Clearance of regrowth greater than 5 years of age**

Clearance of vegetation comprising plants that have grown or regrown following previous clearance, undertaken more than 5 years before the proposed clearance in accordance with the provisions of the Act or these regulations or the revoked regulations, if the clearance is necessary to maintain the land so that it can continue to be used for the purpose for which it was previously cleared.

**36—Recreation track**

- (1) Clearance of vegetation for the purpose of establishing or maintaining a track for recreational use (other than a walking track to which Part 1 clause 8 applies).
- (2) Subclause (1) applies to vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement if the terms of the heritage agreement or management agreement permit clearance for the purpose set out in that subclause.
- (3) Subclause (1) does not apply to—
  - (a) clearance of vegetation established in accordance with a condition of a consent for clearance of vegetation; or

- (b) clearance that would be contrary to—
  - (i) a condition of a consent for clearance of vegetation; or
  - (ii) a condition imposed in connection with clearance of vegetation permitted under these regulations; or
  - (iii) a condition in respect of clearance permitted under the revoked regulations.

**37—Commercial vehicle access track exceeding 5 metres**

- (1) Clearance of vegetation for the purpose of establishing or widening a track that is—
  - (a) more than 5 metres in width; and
  - (b) for use for commercial purposes by vehicles having at least 4 wheels; and
  - (c) reasonably required to provide access.
- (2) Subclause (1) applies to vegetation that is situated or is growing on land that is subject to a heritage agreement or a management agreement if the terms of the heritage agreement or management agreement permit clearance for the purpose set out in that subclause.
- (3) Subclause (1) does not apply to—
  - (a) clearance of vegetation on a road reserve, rail corridor or rail reserve; or
  - (b) clearance of vegetation established in accordance with a condition of a consent for clearance of vegetation; or
  - (c) clearance that would be contrary to—
    - (i) a condition of a consent for clearance of vegetation; or
    - (ii) a condition imposed in connection with clearance of vegetation permitted under these regulations; or
    - (iii) a condition in respect of clearance permitted under the revoked regulations.

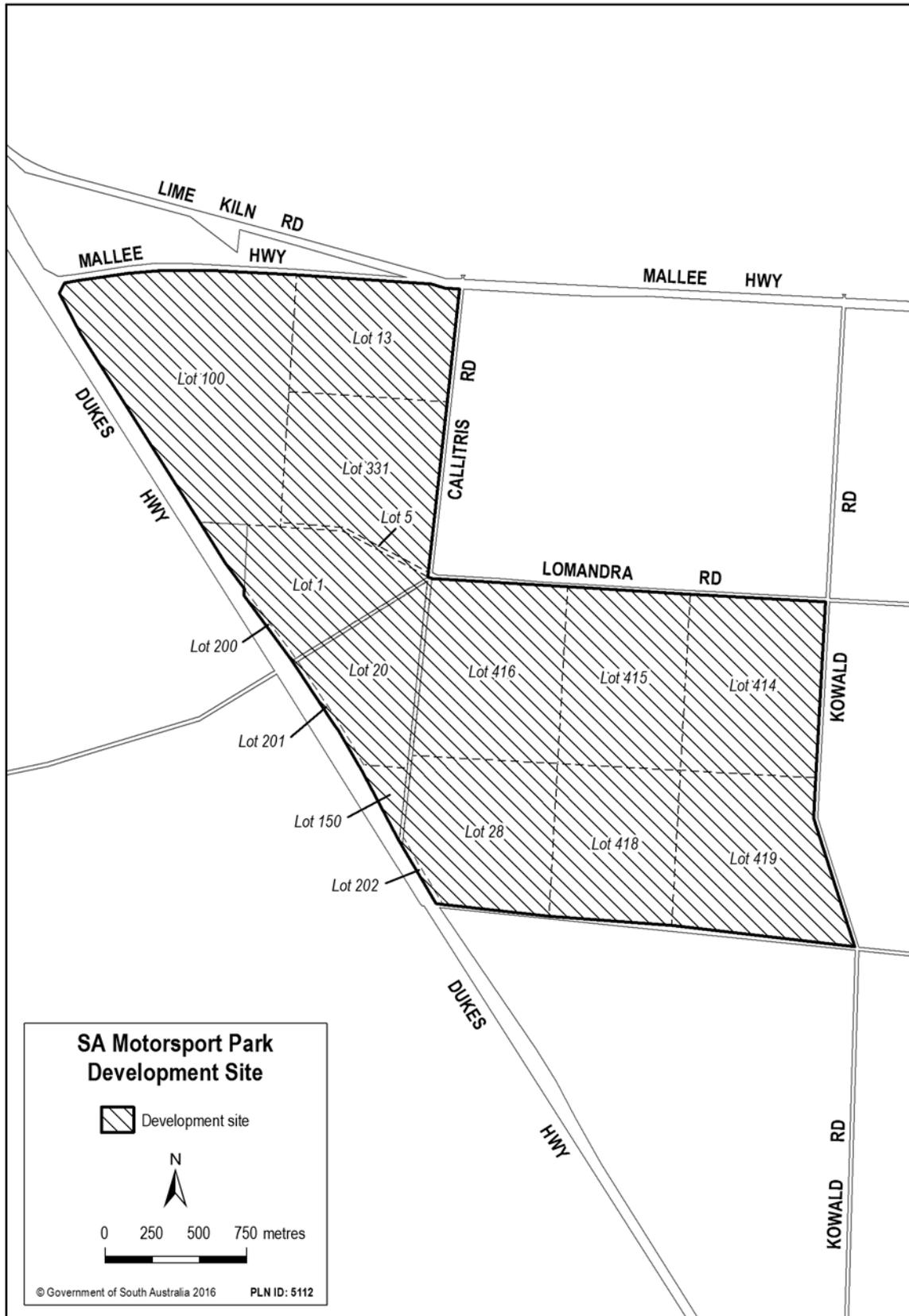
**38—New dam and expansion of dam**

- (1) Clearance of vegetation incidental to the lawful construction or expansion of a dam situated on pastoral land (including where the clearance occurs as a consequence of vegetation being flooded by water retained in the dam).
- (2) Subclause (1) does not apply to—
  - (a) clearance of vegetation established in accordance with a condition of a consent for clearance of vegetation; or
  - (b) clearance that would be contrary to—
    - (i) a condition of a consent for clearance of vegetation; or
    - (ii) a condition imposed in connection with clearance of vegetation permitted under these regulations; or
    - (iii) a condition in respect of clearance permitted under the revoked regulations.

**39—Minor clearance**

- (1) Clearance of vegetation of a kind that does not fall within the ambit of another provision of this Schedule, provided that the Council is of the opinion that—
  - (a) any degradation of land, or loss of quantity or quality of native vegetation, resulting from the proposed clearance will be negligible; and
  - (b) the risk of the proposed clearance having an adverse impact on critical habitats or biological diversity conservation is low and can be removed or minimised by the application of appropriate measures.
- (2) Subclause (1) does not apply to—
  - (a) clearance of vegetation on a road reserve, rail corridor or rail reserve; or
  - (b) clearance that would be contrary to—
    - (i) a condition of a consent for clearance of vegetation; or
    - (ii) a condition imposed in connection with clearance of vegetation permitted under these regulations; or
    - (iii) a condition in respect of clearance permitted under the revoked regulations.

Schedule 2—SA Motorsport Park map



## Schedule 3—Notice under section 33C(8) of Act

### Form 1—Notice of information relating to a warrant

*Native Vegetation Act 1991*

Section 33C of the *Native Vegetation Act 1991* provides for the issuing and execution of a warrant in various cases. A warrant has been issued under the Act and the following information is provided in relation to this matter:

- (a) The name of the authorised officer executing the warrant is:
- This person is an authorised officer under the *Native Vegetation Act 1991*.**
- (b) This warrant was issued by the following magistrate:
- (c) This warrant was issued on [insert date]  
at [insert time] am/pm [insert time]
- (d) The warrant authorises the following course of action:
- A warrant expires at the expiration of 1 month from the date of its issue.
  - A person may be guilty of an offence if he or she fails to comply with a requirement under the Act or hinders an authorised officer in the lawful exercise of a power under the Act. The maximum penalty for an offence is \$5 000. (A person is not required to answer any question if to do so might incriminate the person or make the person liable to a criminal penalty).

Signature of Authorised officer executing warrant:

Date:

## Schedule 4—Revocation and transitional provisions

### Part 1—Revocation of *Native Vegetation Regulations 2003*

#### 1—Revocation

The *Native Vegetation Regulations 2003* are revoked.

### Part 2—Transitional provisions

#### Drafting note—

Transitional provisions are to be developed.

#### Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

### Made by the Governor

with the advice and consent of the Executive Council  
on

No [insert number] of 2016

15MSECCS011