

2. Tasmania

2.1 Legislative framework

Tasmania has no legislative native vegetation clearance controls, and there are no requirements on local governments to consider issues associated with vegetation management. The primary role of local governments in relation to vegetation is as the planning authority for their municipality whereby they control development and zoning of land within their jurisdiction.

Vegetation conservation is addressed more directly through the *Threatened Species Protection Act 1995*. This Act is administered primarily by the Tasmanian Parks and Wildlife Service, however, local governments can also have a role by identifying threatened species within their municipality and encouraging the use of land management agreements under the Act.

Table 2.1 identifies the legislation associated with vegetation management and land use in Tasmania, and which jurisdiction has the primary role under each Act.

How the framework within the legislation outlined in the table influences or impacts on the capacity of local governments to manage native vegetation is illustrated in Figure 2.1. This figure shows the interaction of State and local governments in relation to statutory obligations, emphasising the overriding control of the State government. The primary pieces of legislation which grant local governments general powers and the power to control land use are the *Local Government Act 1993* and the *Land Use Planning and Approvals Act 1993*.

The Local Government Act establishes local governments and grants general powers in relation to rates and by-laws; other specific powers include the power to form joint authorities, purchase property and provide financial assistance. The Land Use Planning and Approvals Act places an obligation on local governments to control land use and development within their municipal area. The process by which a planning scheme is developed is outlined, and includes requirements that the planning scheme be consistent with any State policies, a period of public consultation be provided, and the planning scheme be approved by the Minister before it can become operational. Once implemented, a planning scheme will control all land use and development within the municipality.

Table 2.1: Environmental and land use legislation and implementing jurisdiction

Legislation	Jurisdiction
<i>Conveyancing and Law of Property Act 1884</i>	State
<i>Crown Land Act 1976</i>	State and local government
<i>Environmental Management and Pollution Control Act 1994</i>	State
<i>Forestry Act 1920</i>	State
<i>Forest Practices Act 1985</i>	State
<i>Land Use Planning and Approvals Act 1993</i>	Local government
<i>Local Government Act 1993</i>	Local government
<i>Local Government (Highways) Act 1982</i>	Local government
<i>National Parks and Wildlife Act 1970</i>	State and local government
<i>Private Forests Act 1994</i>	State
<i>Public Land (Administration of Forests) Act 1991</i>	State
<i>Roads and Jetties Act 1935</i>	Local government
<i>State Policies and Projects Act 1993</i>	State
<i>Threatened Species Protection Act 1995</i>	State

However, other State legislation may override local planning decisions made under the Land Use Planning and Approvals Act. Situations where local governments are constrained in land use planning include those where land is:

- part of a critical habitat of a threatened species under the Threatened Species Protection Act;
- a private forest reserve under the *Private Forests Act 1994*;
- required by the Hydro Electric Commission for the provision of services; or
- removed from council control by regulation under the Land Use Planning and Approvals Act.

In the last case the State government will override the provisions contained in the planning scheme, and the area is effectively removed from the control of the local governments. Local governments also

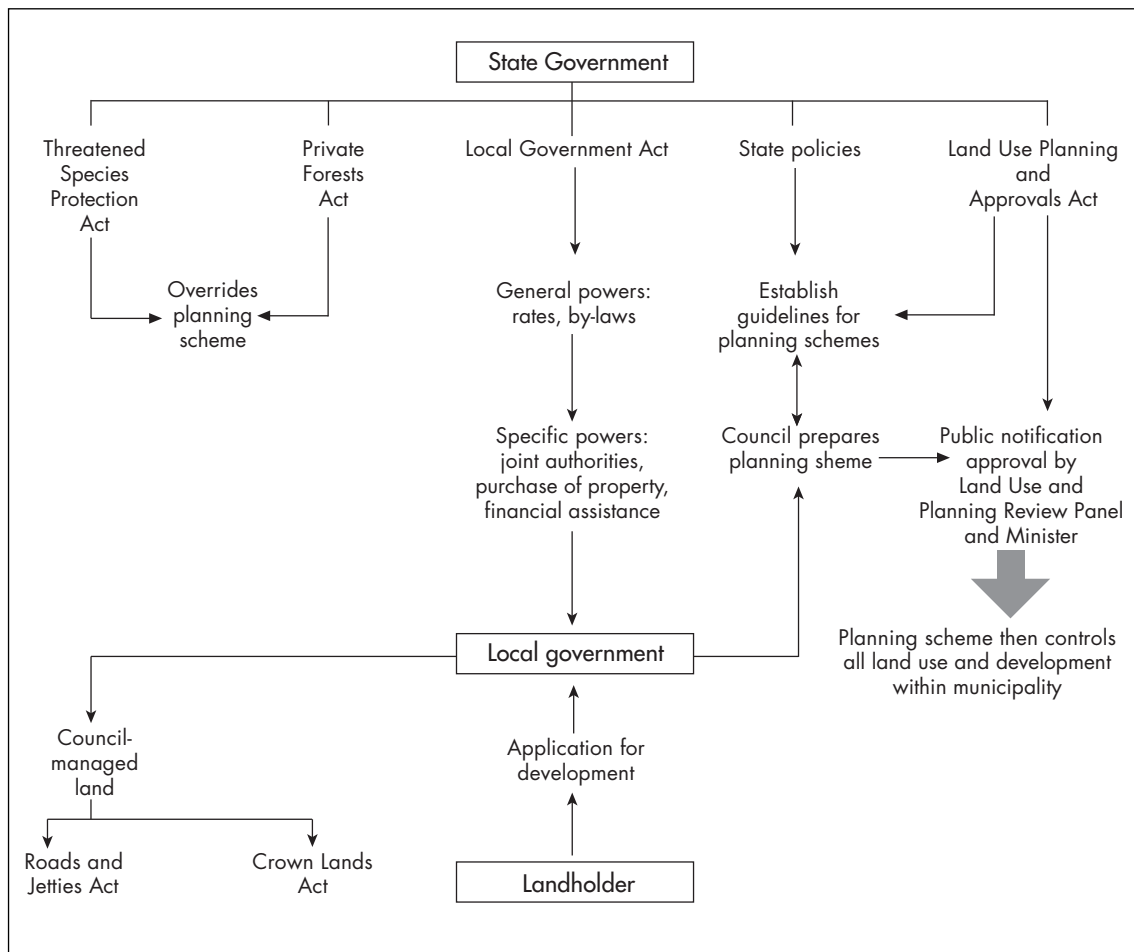
control areas of Crown land, under the *Crown Land Act 1976*, and have the responsibility to maintain roadsides under the *Roads and Jetties Act 1935*.

2.2 Powers of local government

2.2.1 Local Government Act 1993

The Local Government Act provides for the establishment of local governments or councils to plan for, develop and manage municipal areas in the interests of their communities. The Act deals with the formation and powers of councils, elections of councillors, and so on. Other aspects of the Act which are of particular relevance to the issue of native vegetation conservation include the establishment and control of joint authorities, the imposition of rates and charges, by-laws, powers relating to the purchase and lease of property, fencing and land repairs, and the general powers and functions of the council.

Figure 2.1: Role of local government in Tasmania



The general powers and functions of a council are stated in section 20,⁵ and are relatively broad powers relating to planning, resource management and effective management of the municipal area. It is therefore possible that this broad grant of power may be used to enable councils to take action to conserve and manage native vegetation. It is, however, important to look at the more specific powers of councils as it is these specific powers which will guide the actions a council may take once it has resolved to act under its general grant of powers.

Establishment and control of joint authorities

Provision is made for two or more councils to establish a joint authority with the Minister's approval (s38). A joint authority can be established '(a) to carry out any scheme, work or undertaking; (b) to provide facilities or services; (c) to perform any function or duty of the councils under this or any other Act' (s38). A joint authority under this section is a corporate body, and has the powers specified in its rules. The rules must include provisions on membership, functions and powers (although these cannot exceed those given to the individual councils), rules of business conduct and financial transactions (s39). Joint authorities are a mechanism through which regional natural resource management planning could occur. *Joint authorities could be appointed to provide assistance and advice on vegetation conservation, manage fencing assistance schemes or manage public land for the purpose of conservation.*

Rates and charges

Section 73 states the ways in which local governments can raise funds. The first of these is

'(a) by imposing rates, fees and charges'. In this context, rates are either a general rate, a separate rate, construction rate or service rate.

- A *general rate* is an annual rate which applies to all land, whether or not services are provided by the council. This amount can be based on the land value of the land, the capital value or the assessed annual value of the land (s90). The general rate can have two components: a fixed charge, and an amount based on the value of the rateable land. However, if this is done, the fixed charge must apply equally to all rateable land and cannot exceed a certain amount (s91).
- A *service rate* can be imposed for the provision of services such as water supply, sewage removal, fire protection and '(g) any other prescribed service' (s93). Again, the amount is based on the value of the land. It is also possible for a council to impose a service charge (s94), which is an annual charge for a service as identified in section 93 (that is, water supply, sewage removal, nightsoil removal, waste management, stormwater removal, fire protection and any other prescribed service), as long as that service is provided by the council. In particular, a service charge may be made in respect of the amount of water supplied by the council. The charge must be applied equally to all ratepayers, unless an absolute majority of the council agrees otherwise, based on the use, locality or zoning of the land (s94). *It may be possible to extend the definition of or concept of 'services' to include environmental services.* In this way, the service rate would be similar to an environmental levy, which may be imposed to provide funding for environmental projects. Alternatively, environmental services could be

5. Section 20 (1) 'The council of a municipal area has the following functions: – (a) to formulate, implement and monitor policies, plans and programmes for the provision of appropriate services and facilities to meet the present and future needs of the community; (b) to facilitate and encourage the proper planning and development of the municipal area in the best interests of the community; (c) to manage, improve and develop efficiently and effectively the resources available to the municipal area; (d) to develop, implement and monitor strategic plans for the development and management of the municipal area; (e) to provide for the health, safety and welfare of the community; (f) to represent and promote interests of the community; (g) to provide for the peace, order and good government of the municipal area. (2) In performing its functions, the council may do any one or more of the following either within or outside its municipal area: – (a) develop, implement and monitor programmes to ensure adequate levels of its accountability to the community; (b) develop, implement and monitor effective management systems; (c) develop, implement and monitor procedures for effective consultation between the council and the community; (d) inform the community of its activities and provide reasonable opportunities for involvement in those activities; (e) any other thing necessary or convenient.'

prescribed by regulation and could therefore be imposed under this section.

- A *separate rate* can be imposed ‘for the purpose of planning, carrying out, making available, maintaining or improving any thing that is, or is intended to be, of particular benefit’ to the land or occupiers (s100). Prior to the implementation of such a rate, there must be public notification, a period in which submissions may be made by ratepayers, and consideration by the council (ss101–106).

It is possible to allow for variation in general or service rates as they are payable by ratepayers. This can only occur if there is an absolute majority supporting the variation in council, and must be based on one or several of the following factors: ‘(a) the use or predominant use of the land; (b) the non-use of the land; (c) the locality of the land; (d) any planning zone; (e) any other factor approved by the Minister’ (s107). *It would therefore be possible for there to be a variation in rates to assist in vegetation conservation. This could be through the land use provisions, or even by allowing the presence of threatened species to be a factor approved by the Minister.* A variation of rates may, however, be more complex to apply than it appears, requiring an absolute majority of the council, and requiring notification and objection processes to be complied with (ss108–109).

The Local Government Act provides for rate relief for urban farm land. It is possible that the concept of rate relief could be extended to apply to land which is covered by a conservation agreement, or is otherwise protected for its conservation value. Urban farm land is land which provides the principal means of livelihood for the landowner, and is used for substantial agriculture, horticulture and so on, and which is increasing in value due to factors of urban spread (s112). Once the land is declared to be urban farm land, it is revalued by the Valuer-General on the basis that the land will not be used for a purpose other than farm land (s115). As rates are based on the value of the land, the rateable amount payable for that land will be decreased. There are, however, requirements that the difference between the amount actually paid and the amount payable if the land was not farm land

be paid when the land is sold to a person other than the landholder’s family. This concept could be extended to cover land dedicated to vegetation conservation. For example, *if a landholder were to enter into a management agreement with the council, a condition could be that the land would be revalued on the basis that it would not be cleared, and would be maintained and managed purely for vegetation conservation.* The rateable value of the land would then be lower than if the land was not subject to a management agreement, and annual rate charges may be considerably less. This would account for the loss in value of the land from forgone production. This would be an attractive proposition for the conservation of vegetation on the perimeter of urban areas, however, it may not be an effective incentive where the land in question is already zoned as rural, and therefore the rating level is already low.

By-laws

Councils may make by-laws ‘in respect of any act, matter or things for which a council has a function or power under this Act or any other Act’ (s145). If breached, a by-law may attract a fine of up to \$2000 and an infringement notice may be issued (s149). *Councils have powers in respect of land under their control, and could therefore pass by-laws prohibiting certain offences on public land,* such as prohibiting the removal, destruction or interference with native vegetation on public land.

Purchase and lease of property

Councils have power to acquire or purchase land for the benefit of the council or the community (ss175–176). A council can also lease public land to an individual (s179). It may be possible to use these provisions to purchase land for conservation areas, or to lease public land to conservation or other community groups to be managed for vegetation conservation. As these powers exist, it is also feasible that *local governments could establish a revolving fund, where land is purchased, a covenant is placed on it which restricts clearance, and the land is then sold.* However, it may be necessary to demonstrate that vegetation conservation is a public benefit.

Fencing and land repairs

Section 182 of the Local Government Act enables the council to require a landowner to fence their land if a dangerous operation is being carried out on the land, if the land or structures on the land are dangerous for people to enter, or if domestic animals are kept on the land. *It may be possible to amend this section to require a landowner to fence their land or part of their land where there is an area of native vegetation which requires conservation or is the subject of a management agreement.* A later section allows the council to carry out the work if the landowner does not comply with the fencing requirement within the specified time (s185). This, however, is placing the council in the role of a policing body, and it may be better to rely on this section only if a fencing requirement under a management agreement is not complied with.

Section 199 states that anything which is likely to be a fire risk can constitute a nuisance. A council can therefore issue an abatement notice requiring the landowner to clear vegetation it believes contributes to the fire risk. It is unlikely, however, that this would be used in a policy aiming to conserve native vegetation conservation unless it related to the selective removal of exotics.

Financial assistance

Section 77 provides that a council may make a grant or provide a benefit to any person for such purpose as it thinks fit. This power clearly allows for a council to provide grants to individuals or community groups for vegetation management, such as fencing assistance, or for a council to establish a joint authority to provide and administer such a scheme.

2.2.2 Local Government (Highways) Act 1982

Section 21 of the Local Government (Highways) Act imposes a *duty on local governments to maintain State highways within their municipality*. In order to carry out this duty, there is power granted which enables local governments to remove trees which may be a danger to traffic on a highway (s38).

However, there is no duty to manage these areas beyond the extent necessary to avoid danger to road-users. It may be possible to use this Act to impose an additional duty on local governments to *manage roadside areas for the purpose of vegetation conservation*. This would ensure that local governments not only maintain State roadsides for safety, but also conserve native vegetation on roadsides. The *Roads and Jetties Act 1935*, which applies to local roads as distinct from State roads, contains a similar provision which allows for the removal of trees. It would similarly be possible for a duty to be imposed on local governments to manage local roadsides for vegetation conservation. Such a duty would greatly expand the area managed for vegetation conservation in Tasmania, as all roadside areas would be the subject of a duty of care for conservation.

2.3 Land use and planning

Legislation which relates to land use control is based within the Resource Management and Planning System of Tasmania. The system comprises several pieces of legislation, the *Land Use Planning and Approval Act 1993*, *State Policies and Projects Act 1993*, *Environmental Management and Pollution Control Act 1994*, *Resource Management and Planning Appeal Tribunal Act 1993*, *Threatened Species Protection Act 1995* and the *Public Land (Administration and Forests) Act 1991*. This legislation is related by overarching principles of the system, which are included as a schedule to each piece of legislation. The objectives of the system are broad statements of policy⁶ and, as in the case of the Land Use Planning and Approvals Act, are included by stating that: 'It is the obligation of any person on whom a function is imposed or a power is conferred under this Act to perform the function or exercise the power in such a manner as to further the objectives set out in Schedule 1' (s5, Land Use Planning and Approvals Act). These objectives recognise the role of local governments in protecting the environment, and allow for environmental issues to be relevant considerations in determining a planning or development application, and within a planning scheme.

2.3.1 Land Use Planning and Approvals Act 1993

The Land Use Planning and Approvals Act is the primary piece of legislation concerned with land use in Tasmania. The Act gives local governments the power to control development within their municipal areas, primarily through the development and implementation of planning schemes. It also provides that a planning authority may enter into management agreements with a landowner for specific matters, and this may enable these agreements to be used in relation to vegetation management.

Planning schemes

Planning schemes are developed by local governments according to the process described in the Land Use Planning and Approvals Act. They are perhaps the most important aspect of the land use and planning scheme in Tasmania. The term ‘development’, defined in section 3:

includes:

- a. the construction, exterior alteration or exterior decoration of a building;
- b. the demolition or removal of a building or works;
- c. the construction or carrying out of works;
- d. the subdivision or consolidation of land, including buildings or airspace; and
- e. the placing or relocation of a building or works on land.

In turn, the term ‘works’ ‘includes any change to the natural or existing condition or topography of land,

including removal, destruction or lopping of trees and the *removal of vegetation* or topsoil, but does not include forest practices, as defined in the *Forest Practices Act 1985*, and carried out in State forests’ (emphasis added). It is important to consider these definitions when considering the purpose for which a planning scheme can be developed and implemented.

Under section 20, a planning scheme may regulate or prohibit the use or development of any land, and provide that any use or development of land is conditional on an agreement being entered into with a relevant agency. It is therefore possible that a planning scheme, in the regulation of development, may be able to regulate vegetation clearance where it amounts to ‘works’. Planning schemes generally provide for the zoning of land, and specify which land uses can occur in certain areas; it is also possible for a planning scheme to control lot size and restrict removal of trees. In general, there will be land in which certain types of uses are permitted, discretionary or prohibited. If the use is permitted or discretionary, development approval may still need to be sought from the council, and conditions on that approval may be imposed where the use is discretionary. In general, the determination of zones and the development of a planning scheme will initially be done by the council. However, public consultation and periods for public comment are required, and prior to entering into force, a planning scheme must be approved by the Land Use and Planning Review Panel, subject to ministerial approval (see ss20–30). Once a planning scheme is in place, it is possible to amend the scheme, and a process similar to that for developing a scheme must be followed.

6. Land Use Planning and Approvals Act, Schedule 1, Part I ‘1. The objectives of the resource management and planning system of Tasmania are – (a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and (b) to provide for the fair, orderly and sustainable use and development of air, land and water; and (c) to encourage public involvement in resource management and planning; and (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.’ ‘2. In clause 1(a), “sustainable development” means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while – (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.’

Where a landowner wishes to develop their land, a permit will usually be required.⁷ If the development is discretionary, the council may approve the development, or approve it with certain conditions. *It would be possible to attach conditions regarding vegetation clearance or conservation to a development approval. Similarly, it would be possible for all planning schemes to make native vegetation clearance a discretionary development, and therefore ensure that vegetation clearance is controlled as a 'development'.*

A recent amendment to the City of Hobart Planning Scheme 1982 introduces controls over the clearing of vegetation and removal of significant trees. Approval is needed to remove or destroy vegetation on an area of over 500 square metres on any one lot within two consecutive years. Approval is also needed to remove any of the listed significant trees. These amendments clearly illustrate one way in which a local government can be actively involved in controlling vegetation clearance. Amendment to introduce control over all areas is possible.

Landowner agreements

Section 71 allows a planning authority (a local government authority or a marine authority) to enter into an agreement with a landowner concerning land within the area covered by that authority's planning scheme. It is possible, for example, for the Department of Environment and Land Management to enter into such an agreement jointly with the planning authority and landowner (s71(3)). The agreement is binding once it is executed and may provide for any one or more of the following matters:

- a. the prohibition, restriction or regulation of use or development;
- b. the conditions subject to which the use or development may be undertaken;

- c. any matter intended to achieve or advance –
 - (i) the objectives listed in Schedule 1; or
 - (ii) any State Policy...; or
 - (iii) the objectives of the planning scheme or interim order...;
- d. any matter incidental to any one or more of the matters referred to in paragraphs (a) to (c).

It is possible therefore for the agreement to relate to vegetation conservation and land clearing, either by relating it to the objectives of the resource management and planning system or by making it a condition of development.⁸ An agreement may also require the payment of a certain amount in association with an undertaking to carry out the terms of the agreement, which may be forfeited if the landowner defaults on the agreement (s73). Such agreements may end on a specified date, on the cessation of a use or development (s74), or by the agreement of all parties. The agreement must not breach the planning scheme, and must be lodged with the Land Use and Planning Review Panel. The Land Use Planning and Approvals Act further provides that the planning authority may lodge an executed copy of the agreement with the Recorder of Titles, which will then be registered on the title of the land (s78) and will be binding on successive landowners, and enforceable by the Crown. The landowner can, however, apply to the Resource Management and Planning Appeal Tribunal to amend a proposed agreement (s80).

It may be possible to use this section where an application is made for development approval. For example, if a landowner wished to develop part of their property, *it may be possible for a council to grant approval subject to the condition that a management agreement be entered into under section 71; the agreement providing for the registering of a covenant on the title prohibiting clearing of the remaining vegetation.*

7. In some instances, the zoning of the land may provide that, for example, farm sheds may only require building approval where the land is zoned 'rural', and will not require additional development approval.

8. References in Hansard suggest that this section was initially intended to be used for agreements relating to the provision of infrastructure, however, it was acknowledged that it could be used for conservation agreements (House of Representatives, *Tasmanian Hansard*, 11 May 1993 at 2301).

2.3.2 *State Policies and Projects Act 1993*

The objectives of the Resource Management and Planning System of Tasmania are also included in Schedule 1 of the State Policies and Projects Act. The Act allows for the preparation and operation of State policies where there is a matter of State significance, where a consistent and coordinated approach is necessary throughout the State, and where the policy will further the objectives of Schedule 1. It is therefore possible that *a State policy could be developed in relation to vegetation conservation. Once a State policy is made, all planning authorities must amend their planning schemes so that they are consistent with the policy.* Any inconsistencies will be invalid to the extent of the inconsistency (s13). Effectively, a State policy will be the framework of policy considerations, which each planning authority must apply to their region. Provisions exist for enforcement of policies and fining of people who fail to comply with a policy.

The State Coastal Policy has been implemented under the State Policies and Projects Act. Its principles include recognising the importance of maintaining 'representative or significant natural ecosystems and sites of biological importance and the biodiversity of Tasmania's indigenous coastal flora and fauna...' It also recognises that the integrated management of the coastal zone is a shared responsibility, and that the outcomes of the policy are the protection of the natural and cultural values of the coastal zone, including ecological features, conservation of the diversity of species, management of exotics and protection of representative ecosystems. This policy therefore means that local planning authorities in coastal areas should have amended their planning schemes so that they provide for conservation of the diversity of species, management of exotics and protection of representative ecosystems.

In practice, planning authorities are able therefore to take actions, such as imposing conditions on development approvals, or rezoning land to protect representative communities to meet the objectives

of the State policy. It is interesting to note that the Tasmanian Public Land Use Commission (1997a, p. 17) considers that the development of a State policy on rural land use 'would provide the best framework to address native vegetation management and sustainable development objectives, rather than the introduction of clearance legislation'.

A State Policy on Water Quality Management was approved in 1997. Although aimed primarily at water quality control, it contains some provisions which may be relevant to vegetation conservation. It is also interesting to note that it states economic instruments should be considered as a possible means of achieving the policy objectives. The incentives mentioned include rate relief and grants for innovation. The policy is more relevant to vegetation in its provisions concerning water run-off and erosion from land disturbance, requiring implementation of strategies to define and encourage retention of streamside buffer strips, with consideration of incentives to improve management of streamside vegetation. These provisions could easily be used to encourage conservation of native streamside vegetation.⁹

The State Policies and Projects Act also provides for the declaration of projects of State significance. Once a project is declared a State project, the administration of development and permit applications is removed from the local authorities, and the development application is considered by the Sustainable Development Advisory Council established under the Act, and the Minister administering the Act. However, the project will still be bound by the objectives of the Resource Management and Planning System and State policies, and would therefore still have to comply with a State policy on vegetation conservation.

2.3.3 *Crown Land Act 1976*

It is important to consider the position of Crown land, in particular Crown land which is directly managed by a local government or which has been leased by them for some purpose. Crown land is defined as 'land which is vested in the Crown ...'

9. There is also a draft State Policy for the Protection of Agricultural Land, which aims to ensure that prime agricultural land is not subdivided for purposes other than agriculture.

(s2). Section 46 outlines offences relating to Crown land, which include cutting, taking, removing or damaging any trees or vegetation. These offences are punishable by way of a fine. The Crown Land Act also makes provisions for the leasing of land for industrial, business, residential or other purposes, and rural purposes (s30 – industrial, residential, s31 – rural). These leases can contain conditions which, if breached, may lead to the termination of the lease (s36). It may be possible for clauses to be inserted into a lease pertaining to vegetation conservation.

There are also provisions under the Act for the declaration by the Minister of Crown land to be a reserve for several purposes, including for 's8 (1)(f) the preservation of water-supply and land conservation'. It is possible for the Minister to lease this land on such conditions as the Minister thinks fit, as long as it complies with the purpose for which the land was reserved (s8(2)). As these reserves can be created by a declaration by the Minister, they are relatively easy to create, however, they are less secure, requiring only a declaration to remove their reserve status. It would be possible to use this provision to declare Crown land a conservation reserve, for example, which would then restrict the types of activity which could occur on that land, and provide for additional offences for damage to the vegetation.

2.3.4 Forestry Act 1920

The Forestry Act allows for two main classifications of land, State forest and forest reserve. Any public land can be declared State forest, including land, which is covered by other legislation such as conservation areas and State reserves under the *National Parks and Wildlife Act 1970*. State forests can be declared multiple-use forest land, which means that it is available for timber production, or it can be declared deferred forest land, which means that logging is prohibited. Revocation of the status of State forest or the declaration of deferred forest land requires a proclamation to that effect by the Governor, based on the approval of both Houses of Parliament. Forest reserves can include State forests, and are areas that are set aside for public recreation,

protection of aesthetic, scientific or other values, or the protection of flora or fauna. As with State forests, the approval of both Houses of Parliament is needed before this classification can be revoked.¹⁰

2.4 Other relevant legislation

2.4.1 Conveyancing and Law of Property Act 1884

Recent amendments to the Conveyancing and Law of Property Act allow for the creation of covenants in gross. A covenant in gross is a covenant between a landowner and the Crown or local authority. As stated in section 90AB:

(1) ...a covenant...may be created in favour of the Crown or of any public authority or local authority constituted under any Act. (2) A covenant in gross is enforceable between the parties to it, and any person deriving title under any such party.

A covenant can be entered into by a landholder and will be binding on successive title holders. Once agreed to, a covenant can be registered on the title. Covenants are generally restrictive in nature, that is, they restrict clearance rather than allowing conservation.

2.4.2 Forest Practices Act 1985

The Forest Practices Act provides for the implementation of the Forest Practices Code, which sets the standards for forest practice on public and private land. The code addresses issues such as conservation and environmental protection provisions for soils, water quality, biodiversity and site productivity. The Act prohibits the harvesting of timber for commercial purposes from land where there is not an approved timber harvesting plan. The plan must be drawn up in accordance with the Forest Practices Code, which requires the conservation value to be taken into account, and provides for site remediation to avoid any significant degradation. Once a timber harvesting plan has been prepared, it must be submitted to the Forest Practices Board for approval. Part of the

10. For further discussion of these classifications, see Tasmanian Public Land Use Commission, *Inquiry into Areas to be Reserved under the Tasmania-Commonwealth Regional Forest Agreement, Background Report Part A*, July 1996.

approval process is to identify whether or not there are any significant conservation values or threats to sustainable management, which may be affected by the logging activities. If not, the plan will be approved. If it is not approved, it may require modification prior to approval, or may be completely rejected, in which case an application may be made for compensation under the National Parks and Wildlife Act.¹¹

2.4.3 Private Forests Act 1991

A statutory authority, Private Forests Tasmania, is established under the Private Forests Act (s4) to provide advice to private forest managers on sustainable forest management, marketing and other such matters (s6). Private Forests Tasmania also processes applications for the declaration of land to be a private timber reserve for the purpose of growing and harvesting timber. Once declared a private timber reserve, the area is no longer subject to the requirements of the Environmental Management and Pollution Control Act and it is effectively removed from the regulation of local governments through the planning scheme. Local government authorities who have jurisdiction over the land or a person with a legal interest in the land can object to the declaration, and then will have a right of appeal from the decision. It may be possible therefore for a local government to object to the declaration of land as a private timber reserve on the basis that it would be contrary to the vegetation management policies of the council. Despite this, however, the role of local governments in relation to the management of commercial forests is limited.

The Private Forests Act also provides for financial assistance for the purpose of sustainable land management. An agreement which outlines the amount and terms of the assistance may include a covenant that the land is not to be used for purposes other than forestry, unless otherwise provided for in the agreement (s33). This would

override a local government's control over the use of the land for the duration of the covenant.

2.4.4 Public Land (Administration of Forests) Act 1991

The Public Land (Administration of Forests) Act included the recent amendments to the Forestry Act, Forest Practices Act and National Parks and Wildlife Act. The Act also creates the Public Land Use Commission, with powers to review the system of land use in Tasmania. The commission has prepared several reports on land classification in Tasmania, which have included recommendations on the restructuring of the land classification system. These recommendations have yet to be implemented.

2.4.5 National Parks and Wildlife Act 1970

The National Parks and Wildlife Act provides for the creation of *reserves on Crown and private land*. Section 13 outlines the purposes for which land may be reserved, and includes 'the preservation or protection of the fauna or flora contained therein, or of any such flora or fauna'. The reserves proclaimed under the Act include conservation areas, local reserves, private reserves or game reserves. Further division is then possible, with up to nine different names for the reserve possible.¹² If the reserve is to be created on private land, the consent of the landowner is necessary (s14). Such a reserve, once it is proclaimed, must be registered with the Recorder of Titles on the title to the property. The proclamation and reservation of private land can be revoked by a declaration by the Governor. Reserves on Crown land are abolished in a similar way, except that the approval of both Houses of Parliament is required (s16).

The proclamation of an area to be a *private reserve* does not impose specific requirements on the landowner. This is different to public reserves,

11. For more detail on forest practices see Tasmanian Public Land Use Commission, *Inquiry into Areas to be Reserved under the Tasmania-Commonwealth Regional Forest Agreement, Background Report Part F*, November 1996, in particular, Figure 1, p. 40. Only basic details have been included in this review as the focus of the review is local government involvement and powers in relation to vegetation conservation, and the role of local governments in respect to forestry is limited.

12. Conservation area, State reserve, game reserve, nature reserve, national park, historic site, Aboriginal site, wildlife sanctuary and muttonbird reserve. For Department of Environment and Land Management definitions of these reserves, see Tasmanian Public Land Use Commission (1997a).

where National Parks and Wildlife Regulations apply.¹³ For either type of reserve, however, the Act provides for the preparation of a management plan, which may regulate the use and development of the land (s19). The plan needs the approval of the Governor, and the consent of the landowner where it applies to privately owned land. A management plan may indicate the purposes for which the land is reserved, and indicate or restrict the ways in which powers relating to the land may be exercised, and may indicate the extent to which a private landowner may be bound by regulations relating to reserves (s21). It may be possible for a local authority to be involved and comment on a management plan, and the plan may affect the statutory powers of the authority, for example, by restricting land use, which would impose on a council's power to prepare planning schemes (s20(2A)).

The Tasmanian Public Land Use Commission discussion paper, *Mechanisms for Achieving Conservation Management on Private Forested Land: A Discussion Paper* (1996b, pp. 38–39), notes: 'the management plan provides management guidance for the sanctuary and for a binding management agreement on the land title and subsequent landholders'. And further, that 'currently there are 41 wildlife sanctuaries and nine of these have either statutory management plans or draft plans'.

The Public Land (Administration of Forests) Act contains substantial amendments to the National Parks and Wildlife Act. Part VA was inserted, which allows for the creation of *conservation covenants* in relation to land for which approval is sought for a timber harvesting plan under the Forest Practices Act. Where the timber harvesting plan is approved, with amendments to deal with the protection of an endangered species, or where a plan is rejected on the basis of the presence of an endangered species,

the Minister, on behalf of the Crown, may enter into a conservation covenant in regard to that land. Such a covenant may include requirements for a management plan and other such provisions or restrictions on land use. Provisions for compensation can also be included in the covenant (s37B).¹⁴ These conservation covenants are binding and can be enforced by any party or successive title holders. They can be discharged or varied by the Minister with the agreement of the landowner and, once they are registered on the title, they also become binding (ss37G–37H).¹⁵

2.4.6 Threatened Species Protection Act 1995

The Threatened Species Protection Act is primarily concerned with the *protection of species of flora and fauna which are classified as endangered, vulnerable or rare*. Once again, the powers under the Act must be exercised so as to further the objectives in Schedule 1, which include the objectives of the Resource Management and Planning System of Tasmania, and the objectives of the Threatened Species Protection System. The objectives of the latter system include educating the community on the conservation of native flora and fauna, and encouraging cooperative management of native flora and fauna. The more specific provisions of the Act provide for the protection of the critical habitat of the listed species. The critical habitat is the whole or any part of the habitat of a listed species which is critical for its survival (s23). The area is determined by the Director of Parks and Wildlife, and the owners of any private land which is included within the critical habitat must be notified. The Recorder of Titles will then record the area on the relevant titles (s23). There are also provisions under the Act for the preparation of a *land management plan to protect a listed species*;¹⁶ such a plan must be prepared within a certain period of time of the determination of a critical

13. Anecdotal evidence, however, suggests that these are not consistently enforced.

14. As of September 1997, no conservation covenants had been entered into (Ashley Fuller, Tasmanian Public Land Use Commission, 1998, pers. comm.).

15. A flow diagram of the process which must be followed prior to entering into a conservation covenant is shown in Tasmanian Public Land Use Commission (1996b).

16. As of September 1997, two flora management plans were being negotiated under this provision (Ashley Fuller, Tasmanian Public Land Use Commission, 1998, pers. comm.).

habitat. The plan can specify actions to be taken by the landowner, the Director or any other person. The plan must be reviewed after five years (s29). The Director can then enter into an agreement concerning the carrying out of works, or in relation to compensation with the affected landowner. Agreements can also be made by the Director with a public authority, such as a local government, for the management of a listed species (s31). Although it is not stated in the legislation, it would appear that this section would apply in relation to Crown land.

This Act also contains measures for the issuing of *interim protection orders* to protect a species or its critical habitat. Such an order is made by the Minister and can include prohibitions or regulation of activities which take place on the land, or the use of the land (ss32–33). These orders do not have to be made with the approval of the landowner, but are only in force for a limited period of time (s32). An interim protection order prevails over the requirements of a planning scheme, and therefore removes the control of land use in this respect from local government (s39). Permits may be issued to undertake specified activities on land subject to an order.

There are provisions within the Act for the payment of compensation to a landowner who has suffered financial loss directly as a result of a land management agreement or an interim protection order (s45). An application for compensation must be made to the Minister, and is paid from a Threatened Species Fund which is established under the Act (s44).

The Act contains a potentially very broad section of offences relating to listed flora and fauna. Section 51 states that:

a person must not knowingly, without a permit:

- a. take, trade in, keep or process any listed flora or fauna;

- b. disturb any listed flora or fauna contrary to a land management agreement; or
- c. disturb any listed flora or fauna that are subject to a conservation covenant made under section 37B of the *National Parks and Wildlife Act*...

Criminal sanctions are specified for these offences.

2.4.7 Environmental Management and Pollution Control Act 1994

The Environmental Management and Pollution Control Act may have some application in regard to vegetation conservation. The Act will generally apply where there is some form or threat of environmental harm, which is defined in section 5 as ‘any adverse effect on the environment (of whatever degree or duration) and includes environmental nuisance’. Environmental harm is then divided into serious environmental harm and material environmental harm. Applications to councils relating to certain activities (which are classed as level 1, level 2, or level 3 activities) must comply to varying degrees with the requirements of the Act for assessment of possible harm. Approval may be granted on condition that the Board of Environmental Management and Pollution Control enters into an environmental agreement with the operator of premises or landowner (s28). *Environmental agreements* ‘may be made in respect of individual operations, premises, areas or regions and may apply to industry or activity groups’ (s28(2)). For example, they could be entered into with the operator of a mining operation, and could require revegetation of the site and protection of certain areas of vegetation. Although councils may request that an agreement be entered into by the board, and must pass applications in regard to level 2 and level 3¹⁷ activities to the Board of Environmental Management and Pollution Control, they are otherwise excluded from the operation of the Act. The Director of the board may also require that level 1 activities be forwarded to the board for consideration (ss25–27).

17. Section 3 of the Act states that a level 1 activity ‘means an activity which may cause environmental harm and in respect of which a permit under the *Land Use Planning and Approvals Act 1993* is required but does not include a level 2 activity or a level 3 activity;’ a level 2 activity ‘means an activity specified in Schedule 2;’ for example, mines, quarries, woodchip mills, chemical works and so on; and a level 3 activity ‘means an activity which is a project of State significance under the *State Policies and Projects Act 1993*’.

The Environmental Management and Pollution Control Act has limited relevance to local governments, beyond requiring them to pass certain types of applications for development onto the Board for consideration. It may, however, still be possible for the Act to be used to assist with vegetation conservation. *If the concept of environmental harm were interpreted to include clearing of native vegetation (for example, in relation to loss of biodiversity), then more applications would need to be considered by the board, and it may be possible to use this to require landowners to enter into environmental agreements to manage the native vegetation.*

2.5 Summary of opportunities

Most of the incentives considered in this report are already available in Tasmania under existing legislation.

The main recommendation, therefore, is for strong policy support and encouragement from all levels of

government. In particular, local governments need to be encouraged to consider entering into management agreements with landholders as part of development approvals, and to offer grant schemes for vegetation conservation. Table 2.2 outlines these opportunities and the position of other powers of a local government which may influence vegetation conservation and management. By-laws and the formation of joint authorities provide ways in which native vegetation on council-owned and council-managed land can be protected, and planning for vegetation management can occur on a regional level.

It is clear that within existing legislation local governments in Tasmania are able to take a role in the conservation of native vegetation. However, it is equally important to recognise that legislative changes, such as those outlined above, would greatly increase the range of incentives which a local government may be able to offer.

Table 2.2: Opportunities available to local governments to offer incentives for vegetation conservation

Incentive	Amendment
Environmental levy	Amend definition of service in the Local Government Act (s93) to include environmental services; or pass regulation to make the environment a service within the meaning of section 93
Management agreement	Clarify that management agreements under the Land Use Planning and Approvals Act (s71) can be used for vegetation management Policy support/encouragement
Covenant	N/A as can already be offered by local governments
Grants to individuals and community groups	N/A as can already be offered by local governments
Rate rebates	Extend the rate relief scheme for urban farm land to conservation land under the Local Government Act (s112)
Acquisition and sale of land	Clarify that it is possible to resell land
By-laws	Encourage local governments to pass by-laws protecting native vegetation on council-owned and council-managed land
Joint authorities	Encourage local governments to form joint authorities for the purpose of vegetation planning on a regional level