

6. Western Australia

6.1 Legislative framework

A local government in Western Australia is granted general powers relating to the 'good government' of its district. This power is then expanded and restricted by various pieces of legislation, as set out in Table 6.1.

The role of local government is defined through the *Local Government Act 1995* and the *Town Planning and Development Act 1928*, and extends to the making of local laws and the control of land use and development through a local planning scheme. It is, however, limited by the provisions of other Acts, including the *Wildlife Conservation Act 1950* and the *Country Areas Water Supply Act 1947*. This latter Act allows clearing and controls permits for the clearing of vegetation for designated catchment areas. These Acts are regulated by State agencies,

thus limiting the powers and ability of local governments to play a major role in vegetation management and conservation.

6.2 Powers of local government

6.2.1 Local Government Act 1995

The Local Government Act contains a broad and general statement of the functions of a local government, stating that the general function is to '*provide for the good government of persons in its district*'. *This function is to be interpreted liberally, but is to be interpreted in light of other functions imposed by other legislation or limits imposed on the functions by other legislation* (s3.1). The general function includes both legislative and executive functions (s3.4). In this respect, a local government may make *local laws* 'prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act' (s3.5).

Table 6.1: Environmental and land use legislation and implementing jurisdiction

| Legislation | Jurisdiction |
|---|------------------|
| <i>Aboriginal Affairs Planning Authority Act 1972</i> | State |
| <i>Bush Fires Act 1954</i> | State |
| <i>Conservation and Land Management Act 1984</i> | State |
| <i>Country Areas Water Supply Act 1947</i> | State |
| <i>Environmental Protection Act 1986</i> | State |
| <i>Heritage of Western Australia Act 1990</i> | State |
| <i>Land Acquisition and Public Works Act 1902</i> | State |
| <i>Land Administration Act 1997</i> | State |
| <i>Local Government (Miscellaneous Provisions) Act 1960</i> | Local government |
| <i>Local Government Act 1995</i> | Local government |
| <i>Main Roads Act 1930</i> | State |
| <i>Metropolitan Region Town Planning Scheme Act 1959</i> | State |
| <i>Parks and Reserves Act 1895</i> | State |
| <i>Rates and Charges (Rebates and Deferments) Act 1992</i> | State |
| <i>Soil and Land Conservation Act 1945</i> | State |
| <i>Town Planning and Development Act 1928</i> | Local government |
| <i>Transfer of Land Act 1893</i> | State |
| <i>Water and Rivers Commission Act 1995</i> | State |
| <i>Western Australian Planning Commission Act 1985</i> | State |
| <i>Wildlife Conservation Act 1950</i> | State |

It is possible for a local law to extend to areas outside the jurisdiction of the local government, as long as it does not apply within the jurisdiction of another local government, although ministerial approval is needed for such laws (s3.6). A local law will not be valid to the extent that it is inconsistent with any other Act (s3.5). Local laws can make certain acts an offence punishable by fine (s3.1). In making a local law, public notice must be given, submissions may be received and, when considering a proposed law, all submissions must be considered by council. A special majority is required to pass the law. Once it has been passed, the Minister must be given a copy of the law, and notice given in the Gazette (s3.12). Once passed, the law may be amended or repealed by the Governor (s3.17).

Council-controlled land

If a local government has the control of land vested in it under the *Land Act 1933*, the local government may do anything for the purpose of controlling or managing that land that it could do as a board appointed under the *Parks and Reserves Act 1895* (s3.54). This means that local governments are under a duty to control and manage land under their control and may do so for various purposes, including vegetation conservation.

Regional local government

Section 3.61 provides that two or more local governments may, with the approval of the Minister, establish a regional local government 'to do things...for any purpose for which a local government can do things under this Act or any other Act'. A regional local government can be wound up at the direction of the Minister or as agreed when established (s3.63). *A regional local government will have all the powers of a single local government*, except that where local laws made by the regional local government are inconsistent with those made by the local government, the laws of the local government will prevail (s3.67). This allows for a regional local government to be established to address environmental issues on a

regional scale, and for vegetation conservation to be managed by local governments on a regional level.

Rates and charges

Rateable land: All land is rateable except for land which is owned by a local government or regional local government and is not used for a trading purpose; land held exclusively by a religious body as a place of worship; land used for the purpose of a school for the teaching of religion, or a private school; land used for charitable purposes; land used for the storage of grain by a specified company; or land exempt by other law;⁴¹ and all Conservation and Land Management reserves or land declared by the Minister as exempt from rates (s6.26).

It is the responsibility of the Minister to determine the method of *valuation of land*, which is to be used as a basis for rating. In determining this, the Minister must take account of the general principle that *where land is predominantly used for rural purposes, the unimproved value of the land is to be used, and where land is used predominantly for non-rural purposes, the gross rental value of the land is to be used as the basis for rating*. Once the method to be used has been determined, it must be published in the Gazette (s6.28). There are provisions which allow for the rating of the land to be based on the unimproved value of the land, but this only occurs where the land is held subject to a government agreement which expressly makes provision to that effect (s6.30). *It would be possible to extend this provision so that the unimproved value could be used where land is subject to a conservation agreement*, and not used primarily for rural purposes. The effect of this would be a lower valuation and, therefore, a reduction in the amount of rates which would be payable.

When adopting the annual budget, a local government may impose a general rate, a specified area rate, a minimum charge or a service charge. An absolute majority is required for these rates or charges to be imposed.

General rate: A general rate may be imposed, either uniformly or differentially, on all rateable land.

41. Department of Conservation and Land Management (CALM), (1998, pers. comm.).

Where a rate is to be imposed, a local government must state the rate per dollar of the gross rental value or the unimproved value of the land. In the case of an emergency, a local government may be able to impose a supplementary general rate or differential rate; this also requires an absolute majority (s6.32).

Differential rates: Differential general rates may be imposed on the basis of the purpose for which the land is zoned; the predominant purpose for which the land is held or used, as determined by the council, and any other characteristic or combination of characteristics prescribed. This may be specified by regulation. If the use of the land or other basis on which the differential rate is determined is to change during a year, the council is not able to reassess the land on the basis of that change (s6.33). *These differential rates are currently being used to allow for differential rating of land of high conservation value*, with land which is subject to a conservation agreement being a class for which a lower level of rates is payable.

Unless the approval of the Minister is given, the amount expected to be raised through all types of local government rates must be within 90% to 110% of the deficiency of the budget (s6.34). This acts to limit the amount that may be raised by rates, but only in proportion to the expenditure by the local government, and not in the manner of a set cap on the maximum level of income which can be raised through rates.

Minimum payment: A council may impose a minimum rate payment on land, which is greater than the general rate that would otherwise be due on that land. The amount payable may be varied, subject to certain conditions, depending on the rating base of the land or the differential rating capacity of the land (s6.35). Public notice must be given two months prior to introducing a payment in this way, and public submissions must be considered.

Specified area rates: A specified area rate may be imposed on land within a certain area of a municipality for the purpose of meeting the costs associated with a specific work, facility or service which will benefit the ratepayers of the area. The

money raised in this way is only available to be used for that service or facility (s6.37).

Service charges: A council may impose a service charge on a landowner or occupier to meet the cost of providing a prescribed service for the land. Again, the money raised in this way is only available to be used for the provision of that service (s6.38). It is not possible to use this section to introduce an environmental levy or charge, as the definition of service does not appear to extend to include environmental services. However, it may be possible to include the environment within this definition by regulation, and then use the money to acquire and maintain areas of high conservation value.

In conclusion, and given current powers, the most effective means for local government to provide a rate rebate in Western Australia would be through the creation of a conservation zone for areas of high conservation value land, and the application of a lower differential rate to this land. There is no power for local government to issue rate rebates for conservation where, for example, a conservation covenant is attended to a title.

6.2.2 Rates and Charges (Rebates and Deferments) Act 1992

The Rates and Charges (Rebates and Deferments) Act provides the mechanism through which pensioners and holders of certain Commonwealth or State concession cards can obtain a rate rebate, or a deferral of rates or charges which are due under either the Local Government Act, the *Soil and Land Conservation Act 1945*, the *Water Boards Act 1904*, the *Health Act 1911*, or the *Water Authority Act 1984*. Essentially, there are provisions for means testing, setting the percentage of rebate, and for the reimbursement of rebates to the local government authority or other body by the Treasurer. Although rebates are not available for vegetation conservation, this Act *provides a framework which could be adopted if rebates for vegetation conservation were to be made available by the State.*

6.2.3 Local Government (Miscellaneous Provisions) Act 1960

The Local Government (Miscellaneous Provisions) Act includes provisions relating to the power of councils to make *by-laws*, and the process by which this is done (s190), including the power to make by-laws requiring the clearing of vacant land (s202). Section 278 also gives local government the power to purchase or lease land, which would allow a council to purchase land of high conservation value.

6.3 Land use and planning

Land use and planning within Western Australia is primarily found within the provisions of the Town Planning and Development Act and the *Metropolitan Region Town Planning Scheme Act 1959*. The Town Planning and Development Act provides for the making of State policies and the preparation of planning schemes by local government. The Metropolitan Region Town Planning Scheme Act applies only to areas within the metropolitan region of Western Australia, and requires that local governments amend their planning schemes so they are consistent with the Metropolitan Region Scheme. The *Land Administration Act 1997* is also relevant and deals with Crown land and the leasing of Crown land.

6.3.1 Town Planning and Development Act 1928

The Town Planning and Development Act deals with land use and planning issues, particularly statements of planning policy and the provisions relating to the development and implementation of local government planning schemes.

The Western Australian Planning Commission is, with the approval of the Minister, able to prepare *statements of planning policy*, which can concern any matter that may be addressed in a town planning scheme (s5AA). These statements of planning policy are to cover issues of a broad and general nature, and can apply to a particular class of matter, or Statewide or to a specified part of the State. For example, the Peel Harvey Statement of Planning Policy, which includes remnant vegetation.

In preparing a policy, the commission must have regard to:

- a) 'demographic, social and economic factors and influences';
- b) 'conservation of natural or cultural resources for social, economic, environmental, ecological and scientific purpose'; and
- c) 'characteristics of land'.

These clearly allow for the consideration of factors influencing and affecting vegetation management and conservation. A planning policy must be prepared in consultation with affected local governments, and must be approved by the Governor prior to having any effect. Only ministerial approval is required prior to amending or repealing a policy (s5). Planning schemes prepared by a local government will then be required to be consistent with these planning policies.

Planning schemes

Planning schemes can be made with respect to any land, with the general purpose of

improving and developing such land to the best possible advantage, and of securing suitable provision for traffic, transportation, disposition of shops, residences, factory and other areas, proper sanitary conditions and conveniences, parks, gardens and reserves, and of making suitable provision for the use of land for building or other purposes and for all or any of the purposes, provisions, powers or works contained in the First Schedule (s6).

This does not specifically provide for conservation or other environmental considerations except for the provision of reserves. A planning scheme is therefore not required to address environmental and conservation issues, however, such issues may still be included within a scheme.

A local government may prepare a planning scheme in accordance with the Act. Once prepared, the planning scheme must be available for public inspection, and then submitted to the Minister for

approval. The Minister may approve a planning scheme which has been submitted, or may require the local government to modify the planning scheme before it is resubmitted for approval, or may refuse to approve the planning scheme. Once approved, and published in the Gazette, a planning scheme has the full force of law. Such a planning scheme is able to be revoked or amended by a local government, but, again, this will require the approval of the Minister and publication in the Gazette. *A local government, in preparing a planning scheme, must have due regard to any approved statement of planning policy prepared under the Act.* A statement of planning policy can be included within a planning scheme, and will be regarded as part of the planning scheme. Where an area within the proposed planning scheme is listed on a register under the *Heritage of Western Australia Act 1990*, the advice of the Heritage Council must be sought prior to preparing the planning scheme (s7).

Section 7A1 requires that a local government, when preparing a planning scheme or an amendment to a planning scheme, must give written notice to the Environmental Protection Authority. An *environmental review of the proposed planning scheme may be required in accordance with the Environmental Protection Act 1986 (s7A2)*. The expenses incurred in conducting the review may be recovered under the Environmental Protection Act (s7A2).

A planning scheme must be reviewed on the request of the Minister, or every five years (s7AA). If the scheme is still appropriate, the Minister can declare it acceptable, and therefore a review of the scheme is not necessary.

Section 8 allows the Minister to prescribe a set of *general provisions* for the carrying out of the general objectives of a town planning scheme. These general provisions must be included within a planning scheme, and may relate to any matter specified in the First Schedule, which *includes parks and open spaces, tree preservation, and preservation of places of scientific interest*. There are, however, *no specific provisions relating to the conservation of vegetation, or environmental conservation issues*. The general provisions will have effect under a

planning scheme to the extent that they relate to the area covered by the planning scheme and unless otherwise provided for within the planning scheme (s8).

If a local government fails to prepare or review a planning scheme as required under the Act, the Minister may serve notice on the local government, ordering it to comply with the Act (s18A).

If a person has land or property which is injuriously affected by the making of a town planning scheme, that person may make a claim for *compensation* from the local government, subject to certain specified provisions (s12). *This may act as a disincentive for a council to zone land for conservation*. For example, this could limit the development rights of the landowner and amount to an injurious effect on the rights of that landholder. In particular, zoning land so that it can only be used for a public purpose would clearly allow for compensation to be sought.

A local government has the power to purchase or compulsorily acquire land for the purpose of the planning scheme (s13). Where land is owned by a local government, it has all the powers of a landowner with respect to that land (s14). Section 16 provides that a local government, with the consent of the Governor, may borrow money for the purposes of the Act. It would appear that this section would enable a local government to borrow money to purchase land for a public purpose. If vegetation conservation were to be considered a public purpose, then it would be possible to use this section to borrow money to cover the cost of purchasing land of high conservation value.

Section 18C provides that, where land is within a place listed on the register under the Heritage of Western Australia Act, and approval is sought for development of that land, approval must be sought from the local government responsible for the planning scheme which applies to the place, or from the commission. To carry out development on such land without approval is an offence, and can attract a fine of up to \$50 000. However, the Heritage of Western Australia Act only applies to cultural heritage, and will only be of use for vegetation conservation to the extent that areas of

high conservation value are also areas of cultural heritage and are therefore listed on the register.

Local laws

The Governor may make uniform general local laws on any matter contained in the Second Schedule (s31). The Second Schedule includes matters such as classifying or zoning land and prohibiting certain acts in those zones, and prescribing conditions for building densities and conditions for subdivisions. The Minister and Governor may also make further regulations necessary to give effect to the provisions of the Act (s34). This allows the Governor to make general local laws, which may address conservation issues. For example, a general local law allowing for the creation of a conservation zone would then require that all planning schemes include such a zone.

6.3.2 Metropolitan Region Town Planning Scheme Act 1959

The Metropolitan Region Town Planning Scheme Act operates in conjunction with the Town Planning and Development Act; where there is an inconsistency between the provisions of these Acts, the Metropolitan Region Town Planning Scheme Act prevails. This Act provides for *planning schemes for the metropolitan region of Western Australia* (as outlined in Schedule 3 of the Act).

It provides for the establishment of district planning committees for various groups of local governments and the Municipality of the City of Perth (s23). These committees are responsible for inquiring into, reporting on and making recommendations concerning the Metropolitan Region Scheme as far as it relates to each district (s24). The Western Australian Planning Commission is able to make regulations to apply to all or parts of the metropolitan region. A breach of the regulations attracts a fine of up to \$500 and \$50 for each day that the breach continues (s26).

The Metropolitan Region Planning Authority (established under section 7) is responsible for making the Metropolitan Region Scheme with respect to all or part of the metropolitan region. This is essentially *similar to a planning scheme,*

which applies to the region, rather than just a municipality, and therefore is more general in its provisions. A Metropolitan Region Scheme, prior to its implementation, must follow the procedures outlined in the Act, which include ministerial approval, public notification, submissions, public hearings, if necessary, and tabling in both Houses of Parliament (ss31–32). Once implemented, the scheme may be amended, and once again a procedure for doing this is outlined in the Act (ss33 and 33A). It is also possible for a scheme to be consolidated on the request of the Minister (s33D).

Where a Metropolitan Region Scheme exists, a town planning scheme made under the Town Planning and Development Act will not be approved by the Minister unless the scheme and by-laws are in accordance with the regional scheme (s34). In this way, regional provisions override the local government planning scheme to the extent that there are any inconsistencies.

Part IVA relates to *planning control areas*. The Western Australian Planning Commission is able, with the approval of the Minister, to declare that land is part of a planning control area, if that land may be required for a purpose as stated in Schedule 2. Schedule 2 allows land to be required for the *purpose of providing parks and recreation areas, State forest, cultural heritage conservation, and water catchments*. Once an area is declared a planning control area, *a person must not commence a development in that area without prior approval* (s35D). Approval must be sought from the local government, which must then forward the application to the commission for determination (s35E). The commission can approve or refuse the development, or approve it subject to conditions (s35E). This would allow for areas of high conservation value to be declared a planning control area. Again, local government discretion is overridden in regard to these areas.

Under section 37A, the Western Australian Planning Commission can acquire land where the land requires rehabilitation, clearing, development or other work to be undertaken on it for the purpose of advancing the planning, development and use of the land. If such a recommendation by the commission to the Minister is accepted by the

Governor, that land can even be compulsorily acquired by the commission (s37A).

If a person carries out a development on land subject to the Metropolitan Region Scheme which is not in accordance with the provisions of the scheme, then the person is guilty of an offence and may be liable to a fine of up to \$50 000 and a further \$5000 for each day the offence continues.

6.3.3 Land Administration Act 1997

The Land Administration Act deals with the *use and management of Crown land, and the issuing of pastoral and other leases over Crown land*. Crown land is defined as 'all land, except for alienated land' subject to certain provisions relating to coastal land (s3). The Minister must, unless impracticable, *consult with the local government* of the district in which the Crown land is found, if the Minister is to exercise any power in relation to that Crown land (s14).

Section 15 allows for *covenants to be registered on Crown land* when it is transferred to freehold land. A covenant may, for example, provide that the land not be subdivided or that it be conserved. Thus it may be a positive or negative covenant (s15).

Reserves and roads

Crown land may be reserved for a public purpose by the Minister (s41) in accordance with Part 4. There are various types of reserves. Class A reserves are those reserves which are proclaimed as a reserve for a certain purpose, such as a nature reserve for a certain species (s42). A proposal to reserve land as a Class A reservation or to change the boundaries of such a reserve is to be notified publicly. The approval of both Houses of Parliament is also needed (s43). Section 46 allows the Minister to make an order placing one or more persons in a position where they have 'the care, control and management of a reserve for the same purpose as that for which the relevant Crown land is reserved under section 41 and for purposes ancillary or beneficial to that purpose...' A *management body*, on the request of the Minister, or without such a request, may prepare a *management plan for the reserve*, and submit the plan to the Minister for

approval (s49). Before submitting a plan, the management body must consider 'any conservation, environmental or heritage issues relevant to the development, management or use of the Crown land in its managed reserve for the purpose of that management reserve...' (s49). The management body may then develop and manage the reserve in accordance with a management plan which has been approved by the Minister (s49). *It would appear possible for a local government to be appointed a management body for Crown land under this Act.*

Where a reserve is not under the management of a management body or person, then the Minister may grant a lease in respect of that land in accordance with the purpose for which the land is reserved (ss47–48).

A local government may request that the Minister acquire any land which is held by a local government for a public purpose and hold this land as Crown land. The Minister has discretion as to whether to acquire the land. If such a request is made, there is a procedure detailed in section 52, including public notification and submissions, which must be followed prior to the acquisition of that land.

Part 5 of the Land Administration Act deals with *roads*, and operates in conjunction with the *Main Roads Act 1930*. Where there is any inconsistency between the two Acts, the Main Roads Act prevails (s53). Section 55 provides that *land which comprises a road is vested in the Crown, and the local government within whose jurisdiction a road exists has responsibility for the care, control and management of that land, subject to the Main Roads Act* (s55). Local government may therefore be responsible for roadsides and may be able to manage those areas for conservation.

Apart from existing roadside vegetation, there are large areas of remnant vegetation found on unused roads in agricultural areas which could be managed as vegetation corridors.

Sale, leasing and licensing of Crown land

Provisions relating to the *sale, lease and licensing of Crown land* are in Part 6 of the Act. Section 74

allows the Minister to sell Crown land. The Minister can also transfer land, and may do so subject to conditions (s75). The Minister may also grant a lease of Crown land for any purpose, and may do so, subject to conditions or a performance bond, and subject to the payment of rent (s79). Conditional purchase leases may also be granted. On the payment of the full transfer price and the meeting of the conditions, the land will be transferred to the lessee (s80). The Minister may also grant a licence for any purpose in respect of Crown land and may set the period of time and conditions for such a licence (s91). The Minister may sell or lease Crown land to a local government under section 86.

Pastoral leases

Pastoral leases are dealt with independently of other licences and leases. A pastoral lease is one for pastoral purposes which are defined (s93) as

- (a) the commercial grazing of stock; (b) agricultural, horticultural or other supplementary uses of land inseparable from, essential to, or normally carried out in conjunction with the grazing of stock, including the production of stock feed; and
- (c) activities ancillary to the activities mentioned in paragraphs (a) and (b).

The Pastoral Lands Board of Western Australia is established under section 94. Its functions include administering pastoral leases, ensuring that *leases are 'managed on an ecologically sustainable basis;* to develop policies to prevent the degradation of rangelands; [and] to develop policies to rehabilitate degraded or eroded rangelands and to restore their pastoral potential' (s95). The Minister can grant a pastoral lease over any Crown land, but must not grant a lease unless the Pastoral Lands Board is satisfied that the land is able 'to be worked as an economically viable and ecologically sustainable pastoral business unit' (s101). The Minister, in consultation with the board, may include any conditions or terms which are consistent with the Act (s103), and its term for a new lease may not exceed 50 years (s105). Land subject to a lease must not be used other than for pastoral purposes, except where a permit is issued to do so under this Act (s106).

The holder of a pastoral lease must:

at all times manage and work the land under the lease to its best advantage as a pastoral property...[land] must use methods of best pastoral and *environmental management practice*, appropriate to the area where the land is situated, for the management of stock and for the management, conservation and regeneration of pasture for grazing.

The indigenous pasture and other vegetation must also be maintained (s108). A permit must be sought to clear pastoral land. Where this occurs without a permit, a penalty of \$10 000 exists, and the vegetation must be restored to the condition it was in before the offence was committed (s109). It is also an offence to sow or cultivate non-indigenous pasture unless a permit is obtained, and the same penalty exists (s110). The board can also determine the maximum and minimum number of stock which can be carried on land subject to a lease. Again, there is a penalty of \$5000 for a breach of this number, with a daily penalty of \$500 (s111). This determination is, however, subject to the provisions of any soil conservation notice issued for the land. The provisions of such a notice override those issued by the board (s112). The Act also provides that if a lessee fails to maintain indigenous pastures and other vegetation on their land and fails to comply with a default notice, they may be liable to a fine of up to \$10 000 (s130). These are potentially very powerful provisions, which can be used to ensure that rangeland ecosystems are sustainably managed.

The rent payable under a pastoral lease is determined by the Valuer-General and is the amount 'of ground rent that the land might reasonably be expected to realize in good condition, for a long term lease for pastoral purposes...' (s123). Rent relief may be sought from the board where the land subject to the lease has been 'adversely affected by drought, fire, cyclone, flood or other disaster;' or where the lessee 'is suffering financial hardship as a result of poor economic conditions in the pastoral industry' (s128). These sections may encourage farmers to continue farming on degraded land. However, they could

also be used to provide a discount for land that is managed to maintain conservation values.

Clearing on Crown land

A *permit to clear Crown land* may be sought under section 118. A permit may be issued to 'remove specified trees or clear specified areas of scrub or other vegetation for the purpose of promoting the growth of indigenous pasture...' (s118). Prior to issuing a permit, the board must consult with the Commissioner of Soil and Land Conservation, and a permit must not be issued unless the board is satisfied of compliance with any provisions arising from the Environmental Protection Act, the Soil and Land Conservation Act and the Wildlife Conservation Act, and any other applicable law (s117). A permit may also be sought to use specified land for 'crop, fodder, horticultural or other specified kind of agricultural production' (s120).

Offences relating to Crown land

There are also *offences created for certain acts committed on Crown land*. Section 267 provides that if a person, without permission, 'clears, encloses, cultivates or causes or allows stock to graze on Crown land...[or]...removes from Crown land any plant (whether alive or dead) or such other thing of any kind as is prescribed', they commit an offence and are liable to a penalty of up to \$10 000 and, where appropriate, a daily penalty of \$200. Where a condition in respect of Crown land is breached, a person is liable to a penalty of \$1000 and an additional daily penalty of \$100, where appropriate (s269).

Acquisition of land for public work

The Act also extends to cover the *taking of freehold land for public work by the Crown or a local government* (s161) and the Minister is also able to take land in the *public interest* (s11). If land is taken, the landholder is able to seek compensation from the body who took the land (s202); however, *compensation* must be sought within six months of the taking of the land (s207). Again, these compensation provisions may act as a disincentive for local government to purchase land of high conservation value under this Act.

6.3.4 Land Acquisition and Public Works Act 1902

Public work is defined in the Land Acquisition and Public Works Act to include work authorised to be undertaken by any local government and includes work relating to (s14A) 'the *protection and preservation of indigenous flora and fauna*'. The Act allows for the taking of land for the purpose of public works. It would therefore appear to be within the scope of the powers conferred under this Act for *a local government to acquire land for the purpose of the preservation and protection of indigenous flora*.

Section 17 of the Act outlines the procedure for taking land. This includes giving a notice of intention to acquire land and allowing time for public objections. If the Minister, after considering any objections, still decides to proceed, then the Minister can take the land (s17). Once notice is published that the land is taken, title to that land will be vested in the Crown or the local authority (s18). Alternatively, the Minister or local authority may enter into an agreement with a landholder to purchase the land (s26). If the land is taken, the landholder is entitled to compensation from the Minister or local authority (s34). The amount of compensation will be determined by agreement between the parties or by the Compensation Court, established under the Act (s50).

This Act clearly would allow a local government to take or purchase an area of high conservation value for the purpose of the protection and preservation of indigenous flora; however, the cost of purchasing the land or the compensation that may become due may limit the financial ability of a local government to exercise these options.

6.3.5 Main Roads Act 1930

Under the Main Roads Act, *all main roads and highways are vested in the Crown*. Local government has minimal involvement and responsibility in this area. This extends to a local authority committing an offence under section 15A if they or an officer of the council were to:

cut, break, bark, root up or otherwise damage, destroy or remove the whole or any part of any

timber, tree, sapling, shrub, undergrowth, or wildlife in or upon any highway or main road without the prior consent in writing of the Commissioner except when such action is taken to remove a hazard

This Act, however, operates in conjunction with the Land Administration Act and the provisions contained in that Act. The provisions of the Land Administration Act provide that, where land which comprises a road (but not a main road or highway which are the responsibility of the State under the Main Roads Act) is vested in the Crown, the local government within whose jurisdiction the road exists has responsibility for the care, control and management of that land. Local governments may therefore be responsible for some roadsides and may be able to manage those areas for conservation.

6.4 Other relevant legislation

The provisions of legislation outlined in this section are not directly related to local government, but such legislation is important as it establishes State bodies or provisions which constrain a local government's role in vegetation conservation.

6.4.1 Regulation of clearing under the Soil and Land Conservation Act 1945 and Environmental Protection Act 1986

In 1995, a decision was made by Cabinet to strengthen the protection of vegetation. This decision resulted in the signing of a Memorandum of Understanding in March 1997. This was signed by the Commissioner of Soil and Land Conservation, the Environmental Protection Authority, the Department of Environmental Protection Agriculture Western Australia, the Department of Conservation and Land Management and the Water and Rivers Commission (Government of Western Australia, 1997).

The Memorandum of Understanding applies to rural zoned lands in southern Western Australia. Land zoned for other purposes is considered through the statutory planning process. The memorandum requires that all landholders proposing to clear

more than 1 hectare of indigenous vegetation are required to submit a Notice of Intent to Clear to the Commissioner of Soil and Land Conservation and to advertise in main newspapers their intention to clear.

Proposals are considered against assessment criteria agreed in the memorandum, which include: the likelihood of land and water degradation, waterway and wetland protection, water resource protection, biological diversity, geological importance, European heritage and Aboriginal heritage. Proposals to clear are reviewed through the following four-level process (Schedule 5):

- *Level 1: Desktop review* – If the proposal is within a local government area where less than 20% of the original native vegetation remains, or the proposal clearly fails to meet the criteria, the Commissioner of Soil and Land Conservation will formally object to the proposal. Otherwise it is referred to level 2.
- *Level 2: On-site inspection and review* – The proposal is reviewed through evaluation, on-site inspection and report. At this stage the Commissioner of Soil and Land Conservation either formally objects to the proposal or it is referred to level 3.
- *Level 3: Working group review* – An inter-agency group of officials provides advice to the Commissioner of Soil and Land Conservation, who may either decide to accept the proposal with or without amendment, formally object to it, refer it to other agencies, or refer it for review at level 4 because the issues of concern are beyond the powers of the Commissioner.
- *Level 4: Formal assessment by Environment Protection Authority* – Formal assessment is made under the Environmental Protection Act, which is broader in scope than the Soil and Land Conservation Act.

Levels 1 through 3 are undertaken by the Commissioner of Soil and Land Conservation under the powers of the Soil and Land Conservation Act and the Land Act. If the Commissioner objects to a proposal, the landholder may appeal to the Minister for Primary Production. If this appeal is successful,

the proposal will be referred to a level 4 assessment under the Memorandum of Understanding. The memorandum provides for limited financial assistance to landholders adversely affected (Schedule 6).

The Memorandum of Understanding clearly restricts the ability of landholders to clear land within agricultural regions. It restricts the powers of local government, although it should be emphasised that it only applies to lands that are zoned rural. Other lands come under the statutory planning process, in which local governments play a central role.

6.4.2 Soil and Land Conservation Act 1945

Land degradation is defined in the Soil and Land Conservation Act to include *'the removal or deterioration of natural or introduced vegetation where it diminishes the future use of the land'* (s4).

The *Soil and Land Conservation Council* is established under section 9 of the Act. The council has one local government representative and 10 other members, including the *Commissioner of Soil and Land Conservation* (s9). The functions of the Commissioner include *'the prevention and mitigation of land degradation; [and] the promotion of soil conservation'* (s13). The role of the Soil and Land Conservation Council includes advising the Minister on soil and land conservation and promoting awareness of land degradation and conservation (s16).

Section 19A states that where the Commissioner finds that compliance with the provisions of a covenant, condition or term of a lease under the Land Act would cause land degradation, the Commissioner can notify the Minister administering the Land Act and seek to have the relevant clause altered or revoked.

Part IIIA concerns *land conservation districts*. The Governor, by Order in Council, as recommended by the Minister, may declare areas of the State to be a conservation district for the purpose of the Act. Before the Minister makes such a recommendation, they must consult with the local government in whose jurisdiction the land is found (s22). *Where a land conservation district is declared, the Governor*

can make regulations applying to that area which concern the lighting of fires, regulating or prohibiting the clearing of or interference with vegetation, or controlling the use of that land (s22). Once an area has been declared a land conservation district, the Governor, by Order in Council, may establish a *Land Conservation District Committee* for that area (s23). Once again, a representative of local government must be included as a member of the committee (s23). The functions of a Land Conservation District Committee are outlined in section 24 and include *the management of projects and the carrying out of work for preventing, remedying or mitigating land degradation and for promoting soil conservation and reclamation'*, and providing advice to the Minister and commission on matters relating to land use and land degradation in that area.

The Act allows for the *imposition of rates* by the Minister on the recommendation of the Land Conservation District Committee (s25A). The rates may be applied to all land within the district, or to some areas only. The amount payable is assessed on the gross rental value or the unimproved value of the land, as determined for the imposition of council rates (s25A). The Act also limits the amount of rates which may be payable to a certain amount per dollar of the value of the land (s25A). Prior to introducing rates, the Minister must consult with the local government in the district (s25A).

Arrangements can be made for the local government to include with the local government rates a notice about the soil conservation rates payable (s25B). These soil conservation rates, and other funds from the government shall form the Land Conservation District Fund (s25C), and these *funds can be used for the construction of soil conservation works, the promotion of soil conservation, and other actions which will benefit the soil conservation district* (s25C). Section 29 provides that soil conservation works such as the building of fences on soil conservation reserves are public works.

Part IVA deals with conservation covenants and agreements to reserve. Section 30B allows a landowner to enter a covenant with the Commissioner to set land aside for the protection and management of vegetation. Such a covenant or

agreement can be registered on title by a memorandum registered by the Commissioner. A covenant or agreement entered in this way binds the person who consented in writing, and will bind successive owners while the memorial of the covenant remains registered (s30C). If a landowner is to sell land which is subject to a covenant memorial or agreement, the landowner must notify the prospective owner in writing of the existence of the covenant or agreement and a failure to do so may attract a fine of \$2000 (s30D). The difference between an agreement and a covenant is that an agreement may be discharged by the Commissioner when it is no longer necessary, or where the Commissioner agrees to an application by the landholder (s30E). By comparison, a conservation covenant is irrevocable and therefore cannot be discharged (s30B).

Where the Commissioner is of the opinion that land degradation is occurring, the Commissioner may issue a *soil conservation notice*. A soil conservation notice may direct a person to change their agricultural methods, refrain from clearing land, refrain from cutting down or destroying any grass shrub or other plant, or take any other action (s32). A soil conservation notice binds each person on whom it is served and, if a memorial of the existence of the notice is registered on title, it will bind all successive owners and occupiers (s32). The Minister may vary or revoke a soil conservation notice under section 33, and a person may appeal to the Minister within 30 days of the receipt of a notice (s34). If a person fails to comply with a soil conservation notice, they commit an offence and are liable to a fine of up to \$3000 (s35). Any person who interferes with or damages any work undertaken by the commission is also guilty of an offence and may be liable to a fine of up to \$1000.

Section 48 states that the Governor may make additional regulations relating to the Act, including measures to be taken for preventing and mitigating land degradation.

This Act clearly establishes mechanisms at a State level for vegetation conservation and therefore influences the role local government may play in administering and complementing these provisions at a local level.

6.4.3 Environmental Protection Act 1986

The Environmental Protection Act is similar to its counterparts in other States. It establishes the *Environment Protection Authority* (s7), which has the objectives of protecting the environment and preventing, controlling and abating pollution (s15). The functions of the Environment Protection Authority include to conduct environmental impact assessments for certain proposed developments, and to '(k) publish for the benefit of planners, builders, engineers or other persons guidelines to assist them in undertaking their activities in such a manner as to minimize the effect on the environment of those activities or the results thereof...' It is clear then, that *the Environment Protection Authority has some role to play in providing information to local governments, in their role as planners, of the effect of certain types of development on vegetation and other aspects of the environment.*

Part IV of the Act deals with the *environmental impact assessment processes* and states that if it appears that a proposed development is likely to have a significant effect on the environment, or it is one of a certain class of proposals, then the local government must refer that application to the Environment Protection Authority for its consideration (s38). This *removes the responsibility for decision making in such circumstances from local governments although, in practice, the two bodies may work together.*

6.4.4 Parks and Reserves Act 1895

The Parks and Reserves Act establishes *Boards of Parks and Reserves* (s3) These boards have a *duty to control and manage all parks and reserves committed to them* (s4). This includes the power to fence, clear and plant within a park or reserve (s3). Clearly, it would be *within the power granted to the board to fence areas of high conservation value, or to revegetate an area which has been degraded by introduced weeds*. It is also within the power of the board, with the approval of the Governor, to make *by-laws* with respect to parks and reserves, including to prohibit 'damage or injury to and destruction of trees, shrubs, plants and flowers in

the park lands and reserves' (s8(1)). This Act operates independently of local governments and is therefore of little importance to them; however, it is important in the protection it provides to Crown land reserves.

6.4.5 *Wildlife Conservation Act 1950*

The Wildlife Conservation Act is similar to the threatened species legislation of most States. It is linked to the *Conservation and Land Management Act 1984* in various ways. The Act provides that the Crown is bound by the provisions in the Act which relate to flora (s9). Where a matter arises under the Act with respect to a right or power of a local government or government department, the Minister of the respective department or the Minister responsible for the administration of the Local Government Act may consult with the Minister responsible for this Act and, where the Ministers do not agree, the matter must be referred to the Governor, who will decide on the matter in question (s9).

Section 6(6) allows the Minister, by notice in the Gazette, to declare a class or description of flora in all or part of the State to be *protected flora* for the purpose of the Act.

Section 23A provides that flora, which is protected under the Act, and which is on Crown land, is the property of the Crown unless it is lawfully taken in accordance with the Act. Section 23B states that it is an offence for any person to take protected flora from Crown land, unless it is in accordance with a licence issued under the Act, and section 23E further states that a person must not sell any protected flora, except as provided for in the Act. A person may apply for a licence to take protected flora for commercial or scientific purposes or for any other prescribed purpose. The Minister may issue or refuse to issue such a licence and can specify conditions relating to the area from which the flora can be taken and the time at which it can be taken. A licence is valid for a period of 12 months, unless revoked by the Minister in writing (s23C).

In the case of private land, a person shall not take protected flora unless they are the owner or

occupier or have the permission of the owner or occupier. This protected flora cannot be sold unless licensed under the Act as a commercial producer or nurseryman and the flora is taken in accordance with a licence issued under the Act (s23D).

Applications for such a licence can be made under the Act according to the provisions contained in section 23D. Once issued, a licence is valid for 12 months (s23DA).

Flora protected under the Act can also be declared by the Minister to be *rare flora* if it is 'likely to become extinct or is rare or otherwise in need of special protection'. This flora cannot be taken without the written consent of the Minister, even if a licence is held to take protected flora (s23F). A breach of this section makes a person liable to a fine of up to \$10 000. Where an owner or occupier of land has sought permission to take rare flora and this permission has been refused, compensation may be payable for the loss of the use or enjoyment of that land (s23F).

This Act is of little importance to the role of local governments in vegetation conservation except in their role as land manager. Local governments are responsible for 124 000 kilometres of roads and 21% of threatened flora populations in the State. The only other input a local government may have is where a question arises concerning a right or power of a local government. However, in such a case it is the Minister for Local Government who will be consulted and not the local government itself.

6.4.6 *Conservation and Land Management Act 1984*

The Conservation and Land Management Act aims to improve the provisions for the better use, protection and management of certain public lands and the flora and fauna on those lands (long title). The land covered by the Act includes State forests, timber reserves, national parks, conservation parks, nature reserves, marine parks, marine nature reserves and any land placed under the Lands and Forests Commission (s5) or the National Parks and Nature Conservation Authority.

Section 7 states that a State forest or timber reserve is vested in the Lands and Forests Commission.

Land reserved for the purpose of a national park or for the conservation of flora or fauna is vested in the National Parks and Nature Conservation Authority, unless otherwise provided in the reservation order.

Any Crown land can be declared a *State forest* by the Governor. This order must be published in the Gazette and must be placed before each House of Parliament. If both Houses pass a resolution to the effect that the order not be allowed, then the order and declaration by the Governor will not take effect (s8). Once a State forest, the land will continue to be a State forest unless an Act is passed by Parliament or a resolution is passed by both Houses of Parliament to the effect that the land is no longer a State forest. The land will then become Crown land (s9). Crown land can also be declared a *timber reserve* by the Governor (s10). In this respect, Crown land is land reserved under Part III of the Land Act or Part 4 of the Land Administration Act, and includes land over which a pastoral lease has been granted and land held subject to a mining tenement (s11).

Land can be compulsorily acquired under the Act if it is considered by the Governor to be 'required for the purpose of, or incidental to, a State forest, timber reserve, national park, conservation park, [or] nature reserve...' This land may be taken in accordance with the Land Administration Act or it may be purchased or exchanged for other Crown land (s15).

The Executive Director of the Department of Conservation and Land Management may enter an *agreement* with the owner, lessee or licensee of land for the *management of that land as a State forest or other reserve land, such as a nature reserve or national park, by the department*. Such an agreement cannot be entered until approval in writing is given by the landowner, notification is given to the local government within whose jurisdiction the land is located, and the local government has been given time to make written submissions in regard to the proposal (s16).

The *Lands and Forests Commission* is established under the Act (s18). The functions of the commission are outlined in section 19 as including monitoring and carrying out management plans

entered under the Act, providing advice to the Minister, and providing advice on matters relating to land vested in it, if it is in the public interest and practicable for the commission to provide that information.

The *National Parks and Nature Conservation Authority* is also established under the Act (s21). The authority will have vested in it national parks, conservation parks and nature reserves. It is responsible for developing policies for the 'preservation of the natural environment of the State and the provision of facilities for enjoyment of that environment by the community' and 'for promoting the appreciation of flora and fauna and the natural environment' (ss22(1)(b)(i) and (ii)). The authority must also develop and implement *management plans* in respect of land which is vested in it and must 'advise the Minister on the development of policies for the conservation and management of the flora and fauna of the State, whether on public land or private land' (s22(1)(f)). The authority must inform a local government of a proposal to recommend land within the local government's jurisdiction for declaration as a *national park*. This must occur before advising the Minister on the recommendation (s22(5)). The authority itself is to comprise 15 members, two of whom must be councillors from local government (s23).

The Act also establishes the Forest Production Council (s24), which is to give advice to the Minister on matters relating to the management and production of timber in State forests and timber reserves (s25).

The *Department of Conservation and Land Management* is ultimately responsible for the management of land to which the Act applies. Its functions also include (s33(11)) to:

- promote and encourage the use of flora for therapeutic, scientific or horticultural purposes for the good of people in this State or elsewhere, and to undertake any project or operation relating to the use of flora for such a purpose;

- ...be responsible for the *conservation and protection of flora* and fauna throughout the State...; and
- to carry out or cause to be carried out such study or research of or into – (i) the management of land to which this Act applies; (ii) the conservation and protection of flora and fauna...

Part V concerns the *management of land under the Act*. The Lands and Forests Commission or the National Parks and Nature Conservation Authority must prepare a *management plan* for land under their control (s54). The management plan must contain a statement of policies or guidelines and proposed operations. The management plan for a State forest must also state the purpose for which the land is reserved (s55). The objectives for the management of land must include the purpose for the reservation and must be designed to meet those purposes and, in the case of a *national park or conservation park*, must fulfil the demand for recreation by the public as well as protection of indigenous flora (s56). The management plan for a *nature reserve* must maintain and restore the natural environment and protect, care for and promote the study of indigenous flora (s56). These management plans must be available for public inspection and public submissions according to section 58. The plan may also be submitted to other bodies if this is appropriate, and must be submitted to the local government in the area for comment (s59). Once the submissions have been considered, the plan must be submitted to the Minister for approval (s60). The Minister can approve or modify the plan and, once approved, notice of the approval will be published in the Gazette (s60).

Land which is under the control of one of the bodies established under the Act may be classified by the Minister on the recommendation of that controlling body. Land can be classified as a wilderness area,⁴² a prohibited area, a limited access area, a temporary control area, a recreation area, or as otherwise recommended. Where land is classified as a temporary control area, this is only done for the purpose of public safety or for the

protection of flora and fauna and will have effect for a maximum period of 90 days (s62). The Act also allows for the issuing of a permit or licence by the Executive Director for the sale or taking, removing or cutting of forest produce; however, a licence or permit can only be issued if there is a management plan in force for that land (s88). A permit will be valid for a maximum period of 10 years, and a licence for a maximum of 15 years (s91). The permit or licence can be cancelled for a breach of a condition or for a failure to pay any fees or charges due under the Act (s95). Similarly, licences can be issued for the use of other land, and land can be leased subject to those terms and conditions imposed by the Executive Director (ss100–101).

The Governor is granted the power to make regulations prescribing matters that are necessary or convenient to give effect to the purposes of the Act (s126).

6.4.7 Water and Rivers Commission Act 1995

The Water and Rivers Commission Act is only relevant in that it establishes the *Water and Rivers Commission* (s4), which has vested in it, by legislation, various powers (s10), including the *administration of a scheme for issuing clearing licences for certain controlled land under the Country Areas Water Supply Act*.

6.4.8 Country Areas Water Supply Act 1947

The Country Areas Water Supply Act deals with water supply and control. The Governor may, by an Order in Council, declare certain areas to be a *water catchment area* for the purposes of the Act (s9). Land within a catchment area is then referred to as *controlled land*, and it is an offence to clear *vegetation on controlled land* (s12B). In this sense, clearing includes 'to cause or permit the indigenous undergrowth, bush, or trees on the land to be removed or destroyed, or so damaged as to eventually be destroyed, or to cause the removal from the land of vegetation not under cultivation...'. (s12AA). If land is cleared without a permit and the

42. Only two wilderness areas exist in Western Australia (pers. comm., K Bradby, Agriculture WA, 1998).

clearing is not to comply with a statutory obligation under the *Bush Fires Act 1954*, or is not a necessary emergency act (s12C), the offender is guilty of an offence and liable to a fine of up to \$2000, and may be required to revegetate the land in accordance with a court order (s12B). The Minister may apply to the Supreme Court for an injunction to restrain a person from action that would breach the provisions of section 12B (s12BE). A person may, however, clear land in accordance with a clearing licence issued under section 12C of this Act. If a person wishes to clear land within a catchment area, or clear in order to fulfil a statutory requirement, then *a licence may be sought from the Commissioner of Soil and Land Conservation* (s12C). A licence may be issued subject to conditions; if a licence condition is breached, the holder is guilty of an offence and will be liable for that act, and the licence may be cancelled (s12C). In assessing an application for a licence and when determining whether or not compensation is payable for a refusal to issue a licence, the Act requires that the commission or the Supreme Court consider the fact that *at least 10% of the land must have tree and undergrowth cover maintained on it for good agricultural and conservation practices*, and there is no right for compensation where an application was made to clear more than this amount (s12E).

6.4.9 *Bush Fires Act 1954*

The Bush Fires Act is concerned primarily with establishing mechanisms and bodies for *preventing, controlling and extinguishing bushfires*. Within this framework, a local government may require an occupier or owner of land to plough or clear a firebreak on their land. A local government may make local laws in respect to clearing or fire controls (s33). *It may be possible to use this power to implement clearing controls that extend beyond clearing for fire control.*

Section 34 relates to *landowners whose land is adjoining Crown land*. This section allows a landowner to enter that Crown land (except for forests and roads) and clear a firebreak of a maximum of 3 metres wide, not more than 200 metres from the boundary, and to burn the bush between the firebreak and the boundary. This,

however, can only be done once a permit to burn has been obtained from the local government. This section, if interpreted literally, may allow for the clearing of vast amounts of Crown land. This may, in turn, affect the ability of a reserve to provide adequate protection for the species found within it.

The Bush Fires Act may be used by local governments in a way that is detrimental to, or of assistance to, vegetation conservation. The sections allowing local governments to make by-laws regarding clearing could easily be used for permits for clearing in relation to vegetation conservation as well as for fire prevention. However, the section which allows for the clearing of firebreaks on Crown land may allow for relatively uncontrolled clearing of Crown land.

6.4.10 *Heritage of Western Australia Act 1990*

The Heritage of Western Australia Act *primarily provides for the conservation of places which are of cultural heritage significance*. As it relates only to cultural heritage, it is of little importance to vegetation conservation, but it is interesting to note the incentives which are offered within the Act.

Section 11 places all public authorities under a duty to assist in the conservation of places listed on the Heritage Register, and a decision-maker cannot make any decision which will adversely affect a registered place or a place subject to a *heritage agreement* unless the Heritage Council has been consulted. A heritage agreement may be entered into by a local government with a landowner with the approval of the Minister. Such an agreement may be 'for the purpose of binding the land or affecting the use of the land or building in so far as the interest of that owner or occupier permits, and may be expressed to relate to a specific period or to be of permanent effect' (s29). It may also include a *covenant* which will bind subsequent owners, and can relate to the use of the land (s29). This may, in effect, restrict the *clearing of land*, or require that land be maintained for conservation purposes. Under section 33, the Heritage Council can arrange for *financial, technical or other assistance*, and can include a recommendation for the *remission of rates*. *Such incentives could easily be extended to*

apply to the conservation of areas of natural heritage and, therefore, the conservation of vegetation.

6.4.11 Western Australian Planning Commission Act 1985

The Western Australian Planning Commission Act establishes the *Western Australian Planning Commission* (s4). The functions of the commission include giving advice to the Minister in relation to the coordination and promotion of urban, rural and regional land use planning and development (s18). It would therefore be possible for *this body to recommend additional steps to improve vegetation conservation, if this was required through State legislation.*

6.4.12 Aboriginal Affairs Planning Authority Act 1972

The Aboriginal Affairs Planning Authority, Commissioner for Aboriginal Planning and an Aboriginal Advisory Council are established under the Aboriginal Affairs Planning Authority Act. These bodies are concerned with the economic, social and cultural advancement of Aboriginal peoples. The Aboriginal Lands Trust is also established to hold real and personal property (s20). As such, it is a landholder and manager in a manner similar to other landholders, but, where land is reserved, the Aboriginal Affairs Planning Authority must be consulted where an application concerning a licence or right to the land is made (s30). *Local government may therefore, in some circumstances, be required to consult with the Aboriginal Affairs Planning Authority prior to deciding on an application.*

6.4.13 Transfer of Land Act 1893

Section 129BA of the Transfer of Land Act allows for the making of a restrictive covenant between a landholder and local government. The covenant, once it has the consent of both parties, can be registered on a title. This would allow for the creation of a covenant which, for example, prohibits the clearing of vegetation on land subject to the covenant.

6.5 Summary of opportunities

Many of the incentives for vegetation conservation outlined in this report are able to be offered by local governments in Western Australia. However, more encouragement and policy support and some minor amendments to legislation would enable wider use of the incentives. Table 6.2 summarises the steps that would be required to allow each incentive to be offered by local governments. In addition, the table includes reference to by-laws and the formation of regional local governments where existing powers of local governments are able to be utilised in relation to regional vegetation conservation. By-laws that protect native vegetation on council-owned and council-managed land could be passed, and regional local governments could be established to provide for the management of native vegetation on a regional level.

If the range of incentives available to local governments in Western Australia were increased, local governments would then be in a position, not only to lead by example with the management of their own land, but also to offer incentives for all landholders to make a contribution to the management and conservation of native vegetation.

Table 6.2: Opportunities available to local governments to offer incentives for vegetation conservation

| Incentive | Proposed amendments |
|--|--|
| Environmental levy | Amend definition of service in the Local Government Act (s6.38) to include environmental services, or pass regulation defining the environment as a service for the purpose of section 6.38 Revenue raised through environmental levies should not be subject to rate capping |
| Management agreement | Policy support/encouragement |
| Covenant | Clarify that the Transfer of Land Act (s129BA) may be used to restrict the clearing of land, and can be entered into without requiring the transfer of land |
| Grants to individuals and community groups | Clarify that grants for vegetation conservation are for the good government of persons within the district and are therefore within the power of local governments |
| Rate rebates | Encourage use of differential general rates to reduce rates payable on land held for conservation Implement a rate rebate scheme, with land held for conservation exempt from, or charged a reduced level of, rates |
| Acquisition and sale of land | Clarify that it is possible to resell land |
| By-laws | Amend the Local Government (Miscellaneous Provisions) Act (s202) to include the power to make by-laws for the protection of native vegetation on council-owned and council-managed land |
| Regional local government | Encourage the establishment of regional local governments under the Local Government Act (s3.61) to provide regional vegetation planning |