

## 7. South Australia

### 7.1 Legislative framework

Native vegetation conservation in South Australia has been addressed in legislation since the 1970s. Before then, clearance was encouraged and was in fact a standard condition on leases of Crown land. In 1976, investigations found that over 75% of land in agricultural regions had been cleared. To try to limit any further clearance, the State government introduced the South Australian Heritage Agreement Scheme in 1980. This scheme was strengthened with the introduction of planning controls over vegetation clearance in 1983 and controls under the *Native Vegetation Management Act 1985*, which provided financial assistance to landholders who were refused clearance consent on condition that they also entered heritage agreements. This Act has since been replaced by the *Native Vegetation Act 1991*, which retains the Heritage Agreement Scheme, but removes the guaranteed right to financial assistance. Over 550 000 hectares are now

covered by heritage agreements (Binning and Young, 1997a). This legislation remains the primary method for vegetation conservation on private land. Local governments have only a limited role under this legislation. In the case of Crown land, leases can include conditions relating to vegetation conservation, and Crown land can be managed or reserved for conservation.

The Local Government Act provides a broad grant of power that allows local government to actively promote vegetation conservation and management. Other State legislation does, however, limit this grant of power. Where State agencies are established, the broad discretion a local government may otherwise have may be removed and, instead, the local government be required to abide by the decision of the State authority.

The following table outlines the legislation that may be relevant to the issue of local government and vegetation conservation. This legislation has been examined in relation to the powers it grants to local governments and the limits it places on these powers.

**Table 7.1: Environmental and land use legislation and implementing jurisdiction**

| Legislation  | Jurisdiction               |
|--|----------------------------|
| <i>Animal and Plant Control (Agricultural and Other Purposes) Act 1986</i> | State                      |
| <i>Coast Protection Act 1972</i>   | State                      |
| <i>Country Fires Act 1989</i>  | State                      |
| <i>Crown Lands Act 1929</i>  | State and local government |
| <i>Development Act 1993</i>  | State and local government |
| <i>Environment Protection Act 1993</i>                                     | State                      |
| <i>Forestry Act 1950</i>   | State                      |
| <i>Heritage Act 1993</i>   | State                      |
| <i>Land Acquisition Act 1969</i>   | State                      |
| <i>Local Government Act 1934</i>   | State and local government |
| <i>Local Government (Forestry Reserves) Act 1944</i>                       | Local government           |
| <i>National Parks and Wildlife Act 1972</i>                                | State                      |
| <i>Native Vegetation Act 1991</i>  | State                      |
| <i>Pastoral Land Management and Conservation Act 1989</i>                  | State                      |
| <i>Soil Conservation and Land Care Act 1989</i>                            | State                      |
| <i>South Eastern Water Conservation and Drainage Act 1992</i>              | State                      |
| <i>Water Conservation Act 1936</i>   | State                      |
| <i>Water Resources Act 1997</i>  | State                      |
| <i>Wilderness Protection Act 1992</i>                                      | State                      |

## 7.2 Powers of local government

### 7.2.1 Local Government Act 1934<sup>43</sup>

Section 36(3) of the Local Government Act states that a council 'has the powers, functions and duties conferred on it by or under this or any other Act...[and] has power to do anything else necessary or convenient for, or incidental to, the exercise, performance or discharge of its powers, functions or duties under this or any other Act'. This is a relatively broad power; however, it is not as wide a grant of power as the grant to local governments in Queensland. It is limited to the power necessary to carry out the duties and functions delegated to it by the State government.

The functions of a council are stated in section 196(1) as including the following:

- (a) to provide for the development of its area;
- (b) to provide services and facilities that benefit the area, its ratepayers and residents and those who resort to it;...
- (e) to represent and promote the interests of its ratepayers and residents;
- (f) to establish or support organisations and programs that benefit people in its area or local government generally;
- (g) to protect the environment and improve amenity;
- (h) to provide the infrastructure for industry; and
- (i) any other function approved by the Minister.

A council therefore has the power to carry out, or do anything else convenient or incidental to, any of

these function. *It is clearly within the powers of local government, therefore, to protect the environment and, incidental to this, if not directly as a result of this, to manage and conserve native vegetation.*

To perform its functions, a council can raise revenue by imposing rates and charges in accordance with the provisions of the Act (s152). *Revenue raised can then be spent as the council thinks fit, and is not tied to specific expenses (s154).*

#### Rates and charges

Under section 167, a 'council may impose general rates, separate rates, service rates or service charges on land within its area'. All land is rateable except that specified in section 168(2).<sup>44</sup> The amount charged as a rate must be based on the value of the land (s169).

A *general rate* can be composed of two separate parts: an amount based on the value of the rateable land and an amount which is a fixed charge (s169). After considering and adopting its budget, a council may declare a general rate or a differential general rate on land (s174). There is, however, currently a *cap on the amount raised by general rates for the 1998–99 financial year*, limiting the amount to that raised in the 1995–96 financial year plus adjustments to reflect the consumer price index (s174A).

A *separate rate* may only be imposed after the Minister has approved. It may be declared on 'some basis other than the value of the land subject to the rate' (s169). The value of the land, on which the rate is based, is generally the capital value of the land (s170); these base valuations are those made by the Valuer-General or a council valuer (s171).

A council can declare a separate rate or differential separate rates on land 'for the purpose of planning,

43. The Local Government Act is currently under review and focuses on three strategies: boundary reform, legislative reform and functional reform. These proposed changes have not been included, and the current position is that covered in this review.

44. Land which is not rateable under 168(2) includes unalienated Crown land, land used or held by the Crown or an instrumentality of the Crown for a public purpose, except land which is held or occupied under a lease or licence, or that constitutes a domestic premises, a church/chapel and its grounds, land used solely for religious purposes, public cemetery, land (not including domestic premises) occupied by a university, college of advanced education, or other tertiary educational institution, land used exclusively for educational purposes (but not if fees are charged), land occupied by a library, hospital, rehabilitation centre, land under the care or control of the Royal Zoological Society of South Australia Incorporated, recreation grounds, land occupied by the council, and land exempt under any other Act.

carrying out, making available, maintaining or improving a project that is, or is intended to be, of particular benefit to the land, or the occupiers of the land' (s175). Section 155 states that if the money raised in this way is not used, it must be refunded to the ratepayers or credited against future liability for rates.

Both general and separate rates may be differential, that is, they may vary according to the use of the land, the locality of the land, or both, or on some other basis determined by the council (s176). It would appear possible from this section that another basis could be the conservation status of the land, but section 176(2) states that the 'some other basis' provision can only be used where the council is a new council, where there has been an amalgamation of councils, or where the boundaries of a council have been altered, and such a rating can only apply for a period of five years. It would appear, therefore, that this section could only allow for differential rating on the basis of the use of the land. This must be approved by regulation, as a factor appropriate for differential rating (s176(4)). Therefore, the conservation status of the land would need to be reflected in its dominant use. The Local Government (Land Use) Regulations 1989 prescribe nine categories of land use that are permissible differentiating factors, but there is no specific category that would reflect the conservation status of the land specifically.

*It may be possible for a local government to offer some rating incentives, either by imposing a separate rate or a differential separate rate. This rate could be based on the dominant use of the land, so that where land was maintained for conservation, a lower rate would be imposed. Ministerial approval is, however, necessary before this could be achieved.*

Service rates can also be imposed by a council. Such a rate can only be charged in relation to the provision of a water supply, septic tank effluent disposal and 'any other service approved by the Minister'. For this rate to be incurred in the form of an environmental levy, for example, it would be necessary for the Minister to approve the imposition of the levy for an environmental service able to attract a service rate under section 177.

### Acquisition of land

Local governments have the power, with the approval of the Minister, to acquire land under the *Land Acquisition Act 1969* for the purposes of carrying out a project (s198). 'Project' is defined to include '(a) any form of scheme, work or undertaking; (b) the provision of facilities or services; (c) any other activity' (s5). It would, therefore, appear possible for *local governments to purchase land of high conservation value if it is necessary to ensure the proper management of the area*. Ministerial approval would, however, be necessary.

### Joint authorities

Section 200(1) states that

two or more councils ('the constituent councils') may, with the approval of the Minister, establish a controlling authority (a) to carry out any project on behalf of the councils; or (b) to perform any function or duty of the councils under this or any other Act.

This section would allow for *the establishment of bodies to provide for regional vegetation management through local governments*. Council Controlled Land Section 450 of the Local Government Act states that '[a]ll park lands and public squares within an area are, for the purposes of this Act, under the care, control and management of the council of the area'. The Act further provides (s453(1)) that if

any land is dedicated and set apart for the use and enjoyment of the inhabitants of the area or any part of it, the council may, by resolution, assume the care, control and management of the land as if it had been conveyed or transferred in fee simple to the council and the land must then be maintained by the council for the use and enjoyment of the inhabitants.

Therefore, the council will have control and responsibility for the management of all land, within its jurisdiction, that is park land, public land,<sup>45</sup> road or land dedicated for the use and enjoyment of the inhabitants of an area. The council has the power to fence or improve and 'ornament' such areas of land for the purposes of public recreation and enjoyment

(s454). Park land and reserves can also be leased for a maximum of 21 years, but ministerial approval is needed to lease an area over 6 hectares. Councils also have the power to plant trees, shrubs or grasses on foreshore under its care, control and management (s479).

These sections, although not specifically referring to native vegetation management, clearly allow a council to manage public land and park land for native vegetation conservation and to rehabilitate areas, where necessary. They may also, however, allow councils to develop land for recreation and to not take into account the conservation value of that land.

### **By-laws**

Section 667 outlines the purposes for which a council has the power to make by-laws. These include:

- the prevention, suppression and speedy extinguishment of fires, creation and maintenance of firebreaks and the removal of inflammable grass, weeds, and so on;
- the planting, preservation and protection of trees, shrubs, lawns and gardens on any street, road or public place;
- the erection of fences, treeguards and other shelter supports;
- the protection of trees, shrubs, lawns and gardens growing in any place under the control of the council;
- the prevention of trees and shrubs overreaching or overhanging roads, and so on; and
- the proper management, control and preservation of all walks, roads and reserves and all plantations, trees, shrubs, plants, flowers and lawns.

*It is therefore possible for councils to make by-laws regarding the protection, fencing and management*

*of areas of native vegetation, and the control of exotics.*

### **Other relevant powers**

Some form of vegetation management exists through the nuisance provisions within the Local Government Act. This Act provides (s361(1)) that:

if the layers, roots, branches, suckers, or seedlings of any tree, hedge, or plant encroach or grow on any street or road within the area, the occupier or the owner of the land on which the tree, hedge, or plant is growing or was growing must, within seven days after the council has given him or her notice so to do, remove the layers, roots, branches, suckers, of seedlings.

If this is not done, the council can do it and recover the cost from the landowner. These provisions are not specifically aimed at native vegetation conservation, but it may be possible to use them in some circumstances, for example, where the native vegetation is overrun by exotics which are also encroaching on a road.

Section 365A provides that the council has the power to authorise a landowner whose land adjoins a public road or street to plant natives along that road or street. The council may also require the landowner to enclose the area in a fence. The native plants must not, however, unduly obstruct the public. This section may assist councils to promote revegetation.

Sections 779 and 780 concern the removal or damaging of vegetation or collection of timber or stone from roadsides under the control of council. Such acts are prohibited and offenders may be fined. If a tree (taller than 4.5 metres) growing on any land under the care or control of a council is to be cut, a resolution of council is necessary (s880(a)).

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45. Section 5 defines park land as 'land declared or set apart as a park or set aside for the use and enjoyment of the public'. A public place includes a road, street, alley, and any other area which the public is able to use. Public land would have a similar meaning.

### 7.2.2 Local Government (Forestry Reserves) Act 1944

The Local Government (Forestry Reserves) Act allows for the establishment and management of forests by councils on Crown land. The Governor, on the recommendation of the Conservator of Forests, may declare an area to be a *forest reserve* under this Act, and declare that it is *under the control of a council* (s3). Once declared a forest reserve, the land can only be used for forestry purposes and for purposes incidental to forestry purposes (s3). The council must then undertake to manage the land as a forest reserve (s6). The Governor, on recommendation of the Conservator of Forests, is also granted the power under the Act to make regulations pertaining to the management and use of the reserve. *Local government could play an active role in the management of forest reserves for native vegetation.*

### 7.3 Land use and planning

The land use and planning system in South Australia is similar to that of other States. The State develops Statewide planning strategies, which must then be approved by Parliament. Local governments may implement a development plan for their areas. This development plan must seek to promote the provisions of the planning strategy. It contains provisions relating to the uses permitted on certain lands and states the requirements for seeking development approval. Development approvals are generally considered by a local government, but, in some circumstances, other State agencies may limit this discretion. The following section outlines legislative provisions relating to land use and planning in more detail.

#### 7.3.1 Development Act 1993

The Development Act is the primary piece of land use and planning legislation in South Australia. It applies throughout the State (s7). The object of the Act (s3):

is to provide for proper, orderly and efficient planning and development in the State and, for that purpose:

- (a) to establish objectives and principles of planning and development;

- (b) to establish a system of strategic planning and development;
- (c) to provide for the creation of Development Plans
  - i) to enhance the proper conservation, use, development and management of land and buildings;
  - ii) to facilitate sustainable development and the protection of the environment;
  - iii) to advance the social and economic interests and goals of the community.

#### Development approvals

It is important to know what actually constitutes the ‘development’ that is regulated by the Act.

Section 4(1) defines ‘development’ as:

- (a) building work;
- (b) a change in the use of land;
- (c) the division of an allotment; or
- (d) the construction or alteration (except by the Crown, a council or other public authority...) of a road, street or thoroughfare on land...

or, in relation to a State heritage place or local heritage place, the demolition, removal, conversion, alteration or painting of, or addition to, the place, or any other work (except painting) that could materially affect the heritage value of the place; or mining operations or other activity declared a development by regulation. It is these activities which are controlled and addressed by the provisions of the Act. The only type of development directly applicable to the issue of vegetation conservation and management is that concerning the change in the use of the land;<sup>46</sup> for example, where land has been used for agriculture and the landowner wishes to use the property for a tourist development.

The Act establishes several bodies, including: the Development Policy Advisory Committee, which deals with the administration of the Act; and the Development Assessment Commission, which has a role in assessing development applications. Both these bodies are only required to have one person

with knowledge of, and experience in, local government affairs (ss8–11). There is, therefore, *minimal representation of local government at this important level of planning and decision-making.*

The *planning strategy* is a Statewide strategy outlining the main land use and planning objectives and policies for the State. It must be developed after public consultation and ministerial approval, and the approval of Parliament must also be sought. The process is the same as that required for the amendment and enactment of a development plan.

*Councils can prepare a development plan* for areas within their municipality. They can also prepare joint plans with other councils for areas that straddle their municipalities. Where they have a development plan, they must carry out *periodic reviews* of the plan to determine how appropriate it is, and whether or not it is still consistent with the planning strategy (s30). Section 23 states that a *development plan* ‘should seek to promote the provisions of the Planning Strategy’ and it may include planning or development principles relating to the ‘natural or constructed environment and ecologically sustainable development; social or socio-economic issues’; management and conservation of land, and heritage areas; and management, conservation and use of natural and other resources. There is no specific requirement that a development plan should address issues relating to environmental management or environmental impacts. *A development plan can, however, designate a place of local heritage value if it displays or represents certain characteristics; this does not include environmental value* (s23).

The Act also provides that ‘*no development may be undertaken unless the development is an approved development*’(s32). Development applications are determined by a council where the proposed development is within the area of a council, or by the Development Assessment Commission, where the commission is the prescribed assessment authority for that type of development, where the proposed development is not wholly within the

area of a council, where the council has a demonstrated conflict of interest, or where the council fails to deal with the application in the prescribed amount of time (s34).

Developments can be classified as complying or non-complying, according to the development plan or the regulations. Where a development is a *complying development*, provisional development consent must be granted, subject to any conditions specified in the development plan or the regulations. A *non-complying development* cannot be granted consent unless the council and the Development Assessment Commission (or, in circumstances where there is no council, just the Development Assessment Commission) concur in granting consent. In such a case, there is no appeal against a refusal of consent or against a condition imposed on consent (s35).

Developments are also classified into Category 1, 2 and 3 developments. Each category has specific public notification requirements and procedures that must be followed in determining an application (s38). In addition, where the proposed development is one of environmental significance, the *Environment Protection Act 1993* requires the preparation and assessment of an environmental impact study by the Environmental Protection Authority. Consent can be refused, granted with conditions, or granted without conditions by the relevant authority (s42). Offences are created for carrying out development without consent or contrary to conditions (ss43–44).

Where a *development is ‘of major environmental, social or economic importance’*, the Minister may, by notice given in the Gazette, state that the development must comply with the requirements of section 46. Section 46 includes provisions requiring the preparation of an environmental impact statement, and determination of the issue, not by the council, but by the Minister, on advice from the Major Developments Panel. The Major Developments Panel has one member nominated by the Local Government Association of South

46. The law surrounding a change in use of land is an area which has received some attention in South Australia, due to the case of *Dorrestijn v South Australian Planning Commission* (1984) 56 ALR 295. The case did, however, not completely clarify the position, leading to the inclusion of section 6 of the Act to define when the use of a land stops, and when it can be considered a continuing use.

Australia (s46A). This removes the development from council control completely, placing all responsibilities on the Minister and with the final approval granted by the Governor (s48).

Where a State agency proposes to undertake development, an application must be lodged with the Development Assessment Commission and, if it is proposed within the jurisdiction of a council, that council must also be given notice of the application. The council may make submissions to the commission on the development before the application is finally determined by the Minister (s49).

### **Land management agreements**

The Act also provides for *land management agreements*. Section 57 states that the Minister or the council 'may enter into an agreement relating to the management, preservation or conservation of land within the area of the council with the owner of the land' (s57(2)). The agreement can be noted on the title and it will then be binding on the current owner of the land. The agreement can allow for the remission of rates and taxes payable on that land, but there can be a *remission of rates* only with the agreement of the council (s57). *A land management agreement may be taken into consideration when determining an application for a development*. It would appear that a land management agreement can extend to reserves, including council-controlled property, as it states that the "owner" of land includes a person who has the care, control or management of a reserve' (s57). *It would be possible, therefore, for a council to enter a land management agreement with a landholder as a condition of development consent, and that agreement would then be binding on that landholder*.

The Development Act allows councils to make submissions in relation to a development application before the Development Assessment Commission, and prepare a development plan for an area. This plan is not legally binding; it is merely policy. The relationship between development plans and other legislative requirements that affect the approval of development, such as the *Native Vegetation Act 1991*, is not specifically stated and, in some circumstances, this may lead to uncertainty in the planning approvals process. In many instances,

therefore, the role of local government in land use decision-making is limited.

### **7.3.2 Native Vegetation Act 1991**

The Native Vegetation Act was enacted to repeal the provisions under the *Native Vegetation Management Act 1985* and to amend the *Heritage Act 1978*, which has since been replaced by the *Heritage Act 1993*. The Act was also passed to 'provide incentives and assistance to landowners in relation to the preservation and enhancement of native vegetation; to control the clearance of native vegetation' (long title). It does this through provisions for heritage agreements and other assistance to landholders, and the establishment of a *Native Vegetation Fund* to provide financial assistance. The Act also provides that the *clearing of vegetation, except in accordance with the Act, is prohibited*.

Section 4 provides that the Act applies to all of the State, except for the Metropolitan Adelaide areas included within the jurisdiction of certain local governments. These excluded areas can be extended further by regulations made by the Governor.

The objects of the Act are set out in section 6. They include:

- (a) the provision of incentives and assistance to landowners in relation to the preservation, enhancement and management of native vegetation;
- (b) the conservation of the native vegetation of the State in order to prevent further reduction of biological diversity and further degradation of the land and its soil;
- (c) the limitation of the clearance of native vegetation to clearance in particular circumstances including circumstances in which the clearance will facilitate the management of other native vegetation or will facilitate the efficient use of land for primary production;
- (d) the encouragement of research into the preservation, enhancement and management of native vegetation; and

- (e) the encouragement of the re-establishment of native vegetation in those parts of the State that have been cleared of native vegetation.

The Act establishes a *Native Vegetation Council* with seven members appointed by the Governor. The role of the Native Vegetation Council is, in part, to determine applications for consent to clear native vegetation; to review the principles of clearance of native vegetation (as outlined in the Act); to encourage the re-establishment, preservation and management of native vegetation and to administer the Native Vegetation Fund (s14) which is established under section 21. One member of the Native Vegetation Council is a person nominated by the Local Government Association (s7). The existence of the Native Vegetation Council effectively removes direct responsibility for regulating the clearing of native vegetation from all areas covered by the Act. Within metropolitan areas there may still be a direct role for local government, as discussed below.

### **Heritage agreements and incentives**

The Act provides that the Minister may enter into a *heritage agreement*<sup>47</sup> with a landowner. This agreement attaches to the land and is *binding on the owner to that land and successive owners and is registered on title and has the same effect as a covenant*. The consent of the Native Vegetation Council must be sought prior to entering, terminating or amending an agreement under the Act (s23). A heritage agreement can contain 'any provision for the preservation or enhancement of native vegetation' (s23A), including *restricting the use of the land; restricting or requiring specific work to be undertaken; providing for the management of the land, including the preparation of an agreed management plan* (that is, agreed to by the Minister and landowner); *providing for 'remission of rates or taxes in respect of the land'; providing for the Minister to pay 'to the owner of the land an amount as an incentive to enter the heritage agreement' and an amount representing the decrease in the value of the land due to the existence of the heritage agreement* (s23A). The Native Vegetation Council

must keep all heritage agreements on a register, including a record of any alterations or terminations of an agreement (s23B). These agreements will override any council decision concerning the land to the extent that the decision is inconsistent with the approval. For example, the council cannot approve a development which would breach a heritage agreement.

Where a landowner has entered into a heritage agreement, they may apply to the Native Vegetation Council for *financial assistance for management of the land, preservation or enhancement of the native vegetation on the land*, or the undertaking of research in relation to the preservation, enhancement or management of native vegetation on the land (s24).

### **Regulation of clearing native vegetation**

In relation to the clearing of native vegetation, Section 26 states that a 'person must not clear native vegetation unless the clearance is in accordance with' the Act. A breach of this section may attract a fine of up to (approximately) \$40 000 or two years imprisonment. A similar fine may be imposed if a person breaches a condition specified on the clearing consent. 'To clear' is defined in section 3 as including 'to cause or permit the clearance of native vegetation'. Clearance is itself defined as:

- (a) the killing or destruction of native vegetation;
- (b) the removal of native vegetation;
- (c) the severing of branches, limbs, stems or trunks of native vegetation; and
- (d) the burning of native vegetation; and includes the drainage or flooding of land, or any other act or activity that causes the killing or destruction of native vegetation, the severing of branches, limbs, stems, or trunks of native vegetation or any other substantial damage to native vegetation.

47. The heritage agreements under the Heritage Act and the Native Vegetation Act are not the same, although they achieve the same purpose.

They are broad definitions and therefore cover actions which cause direct and indirect clearing or loss of native vegetation.

Consent may be granted by the Native Vegetation Council to clear vegetation, and native vegetation may be cleared if it is of a prescribed class or in prescribed circumstances (s27). Any application for consent must be accompanied by a vegetation management plan and any other information required by the Native Vegetation Council (s28).

In deciding whether or not to grant consent, the Native Vegetation Council must have regard to the Principles of Clearance of Native Vegetation as stated in Schedule 1 of the Act, which state that vegetation should not be cleared if, in the opinion of the Native Vegetation Council:

- (a) it comprises a high level of diversity of plant species;
- (b) it has significance as a habitat for wildlife;
- (c) it includes plants of a rare, vulnerable or endangered species; [as listed in the National Parks and Wildlife Act];
- (d) the vegetation comprises the whole, or part, of a plant community that is rare, vulnerable or endangered;
- (e) it is significant as a remnant of vegetation in an area which has been extensively cleared;
- (f) it is growing in, or in association with a wetland environment;
- (g) it contributes significantly to the amenity of the area in which it is growing or is situated;
- (h) the clearance of the vegetation is likely to contribute to soil erosion or salinity in an area in which appreciable erosion or salinisation has already occurred or, where such erosion or salinisation has not yet occurred, the clearance of the vegetation is likely to cause appreciable soil erosion or salinity;

- (i) the clearance of the vegetation is likely to cause deterioration in the quality of the surface or underground water;
- (j) the clearance of the vegetation is likely to cause, or exacerbate, the incidence or intensity of flooding...

These principles have effectively ruled out all broadscale vegetation clearance. The Native Vegetation Council in general must not consent to any clearance that is 'seriously at variance' with those principles. The only opportunity provided in the Act for the Native Vegetation Council to approve such clearance is where the vegetation comprises 'isolated plants', as defined in the Act. In this situation, the Native Vegetation Council can give greater weighting to the economic advantages to be gained by the clearance – but only if conditions are applied requiring revegetation elsewhere on the property, such that the environmental losses associated with the vegetation to be cleared are outweighed by the environmental benefits of the vegetation to be planted (s29). A right to appeal does not exist for a failure to grant consent, and consent, if granted, is valid for a period of two years, unless otherwise stated (s29).

The Native Vegetation Regulations 1991 provide a number of additional exemptions that outline several circumstances in which consent to clear is not needed. These are prescribed circumstances under section 27. The *regulations allow native vegetation to be cleared without consent* in the following circumstances:<sup>48</sup>

- where the clearance is authorised by another Act or regulation [subregulation 3(1)(a)];
- where the clearance is incidental to the erection of a building or other structure [subregulation 3(1)(b)];
- where the vegetation is situated within 20 metres of a dwelling [subregulation 3(1)(f)];
- where the purpose of the clearance is to reduce the risk of personal injury or damage to property [subregulation 3(1)(g)];

48. There are extra constraints which may limit these circumstances (1998, pers. comm.).

- where the clearance consists of burning for fire management purposes in conformity with an approved fire management plan [subregulation 3(1)(h)];
- for the purposes of providing fencing material or firewood [subregulation 3(1)(i)];
- for the purposes of fencing establishment or maintenance, or construction tracks for vehicles [subregulation 3(1)(j)];
- for the purposes of developing fire breaks [subregulation 3(1)(k)]; and
- road reserve management [subregulation 3(1)(l)].

An additional exception may be made if it can be proven that the clearing of native vegetation was not committed intentionally and 'did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence' (s40). Additional regulations in relation to the Act can be made by the Governor under section 41.

It has been recognised that these exemptions have allowed for considerable amounts of clearing, especially in rural–urban fringe areas, because the exemptions specified in the regulations limit the application of the principles regulating vegetation clearance in urban areas.<sup>49</sup> Hence, a significant issue is that the Act has only limited capacity to regulate the *clearing of native vegetation where urban development is encroaching on rural areas*. *Local government could have an important role in restricting vegetation clearance in these areas*.

### **7.3.3 Crown Lands Act 1929**

The Crown Lands Act applies to *Crown land which is held under lease* (s3). Section 5 enables the Minister to sell or lease Crown land, and to dedicate Crown land for any of the purposes specified, including forest reserves, and, further, to declare (by notice in the Gazette) that any *dedicated lands shall be under the 'care, control, and management of any*

*Minister, municipal or district council...*' (s5(f1)). Hence local governments could be given the responsibility of managing Crown land within their region. Section 288B provides that the Governor may grant ownership of any Crown land to 'a municipal or district council or a body corporate vested with the powers of a council'. In either case, the land will be excluded from the operation of the Crown Lands Act. Where dedicated lands have not been placed under the care, control or management of another body or person, the Minister has care, control and management of those lands (s250).

The Crown Lands Act is primarily concerned with the lease of Crown land and conditions of that lease. Section 249C states that:

- (1) Notwithstanding any provision to the contrary in this Act or any other Act, or in a lease or an agreement to purchase, a lessee or purchaser is not required to clear vegetation from the lands comprised in the lease or agreement.
- (2) Subsection (1) applies to a lease, or an agreement to purchase, under any of the *Crown Lands Act*, or any other Act dealing with the disposal of lands of the Crown.

Section 294C has been included, because in the past leases have generally included a section requiring landholders to clear a certain amount of land. Section 263 further attempts to alter any existing notions that clearing is necessary. It states that '... it shall be a condition of every lease or agreement granted or entered into, after the eighteenth day of December, 1912, that at least 2 hectares of every 100 hectares of the land comprised therein shall be set apart and reserved for the growth of timber, and that no timber trees growing thereon shall be destroyed'. This essentially requires compulsory conservation of at least 2% of a property which is leased from the Crown.

Section 275 makes it an offence to cut or remove trees in contravention of a covenant or condition in a lease or agreement. There is, however, only a minor penalty associated with this offence.

49. Department of Environment and Natural Resources, Review of Legislation Affecting Native Vegetation in South Australia, Report, Cole Associates Pty Ltd, October 1994

The Schedules to the Act outline further conditions which can be imposed on a lease agreement concerning Crown land. There are no specific provisions requiring the management and conservation of native vegetation. Such a condition could be stated in the Schedule and therefore included in all leases. These leases and conditions are outside the control of local government and are dealt with purely by the State.

## 7.4 Other relevant legislation

### 7.4.1 Soil Conservation and Land Care Act 1989

The Soil Conservation and Land Care Act aims to provide for 'the conservation and rehabilitation of the land' (long title). The Act is binding on the Crown (s4). Section 6 includes the objects of the Act which include:

to recognise that the land and its soil, vegetation and water constitute the most important natural resource of the State and that conservation of that resource is crucial to the welfare of the people of this State;

and

to ensure that conservation of land becomes an integral part of land management practice, and that land is used within its capability.

*The Act imposes a duty on landowners 'to take all reasonable steps to prevent degradation of the land'* (s8). This is a clear statement of duty and of the objects of the Act. A Soil Conservation and Land Care Fund is established under the Act (s9), as is a Soil Conservation Council (s14) whose duties include monitoring and evaluating the land of the State, and advising the Minister (s19). The Council can recommend that the Minister *compulsorily acquire land for the purposes of the Act*, in accordance with the Land Acquisition Act (s12), and the Minister can enter into *agreements with a landholder about carrying out conservation or rehabilitation works, or for financial assistance* (s13). There are no specific requirements for a member of the Soil Conservation Council to be a person representing local government (s14). There is, however, a specific requirement that where *Soil Conservation Districts* are declared, and

a *Soil Conservation Board* is established to oversee the management of that area, that one member of the board is to be appointed by the local government of that area (s22 and 24). Soil Conservation Boards are responsible for implementing and developing support programs, promoting the awareness and understanding of conservation issues, and implementing and enforcing the Act (s29).

Where the area of concern falls outside a local government area, the Act provides that the Soil Conservator is to take over the role of the Soil Conservation Boards (s32).

Part 4 of the Act provides for the development of management plans for certain areas. *District plans* are to be established by Soil Conservation Boards, and are to identify:

- classes into which the land falls;
- the capability of the land;
- the preferred uses for the land;
- the current uses of the land;
- degraded areas;
- nature, causes, extent and severity of the degradation;
- steps for rehabilitation;
- land management and best practice for certain classes of land; and
- proposed undertakings of the Soil Conservation Board for the following three years (s36).

The Soil Conservation Boards can also enter into a *voluntary 'property plan'* with a landholder, identifying and establishing management practices for that land (s37). Provisions also exist for the making of *soil conservation orders* by Soil Conservation Boards, which may state, among other requirements, that the landholder 'plant specified vegetation or refrain from destroying specified vegetation' (s38). Part of the order can also be a requirement to enter a property plan with the board (ss38–39). Failure to comply with a *soil conservation order* is an offence under section 42; it is *binding on all successors in title while it remains in force*, and

will be noted on the title of the property (ss42–43). Property plans may also be noted on title at the request of the landholder, and they will then become binding on successive landholders (s45). They will also bind the local government to the extent that an approval to carry out an act inconsistent with a property plan will not override the plan.

The Soil Conservation and Land Care Act provides specific and comprehensive mechanisms to try to prevent and remedy land degradation in South Australia. *The role of local governments under the Act is minimal, with only one member of a Soil Conservation Board being required to be a local government officer. The Act fails to specify, however, the relationship between district plans and development plans (planning schemes). It is unclear from the Act whether a local government, in considering a development application, is bound by the district plan and cannot decide in a way inconsistent with the district plan, or whether a district plan is merely a factor which must be considered by local governments as part of their decision-making processes.*

#### **7.4.2 Water Conservation Act 1936**

The Water Conservation Act deals with the conservation and regulation of the use of water. The control and management of a watercourse can be vested solely in the Minister or the council of an area (ss13 and 53). If the council has responsibility for the management, there is a *duty on the council that it 'shall efficiently maintain in good order and condition the water conservation reserve and all waterworks thereon for or in connection with the conservation or supply of water'* (s53). *This is effectively imposing a duty on the council to stop erosion of land surrounding the watercourse and loss of soil and debris into the water supply.*

Although not specifically stated, *this may extend to maintaining vegetation cover in the immediate vicinity of a watercourse.* There is, however, no requirement that the native vegetation of an area be retained. The Act also contains a provision that '[a]ny person who, without the written permission of the Minister...cuts, fells, or removes any trees or timber from any land leased by, under the control of, or vested in the Minister, shall be guilty of an

offence' (s81). This section applies to council-managed watercourses as well as those areas under the control of the Minister. It is, however, a minor offence.

#### **7.4.3 Wilderness Protection Act 1992**

The Wilderness Protection Act is similar to the *National Parks and Wildlife Act 1972* in that it provides for *the establishment and protection of wilderness areas* in South Australia. In determining whether an area is wilderness, the Wilderness Advisory Committee, established under section 8 of the Act, will consider the following criteria (s3(2)):

the land and its ecosystems must not have been affected, or must have been affected to only a minor extent, by modern technology; the land and its ecosystems must not have been seriously affected by exotic animals or plants or exotic organisms.

*If an area of Crown land or privately owned land is considered to be wilderness, the Minister may, with the consent of all parties with an interest in the land, recommend to the Governor that the area be declared a wilderness protection area, or a wilderness protection zone, and once a resolution of both Houses of Parliament to that effect has been passed, the area will be protected under the Act (s22). As under the National Parks and Wildlife Act, local governments have no role in wilderness protection.*

#### **Heritage Act 1993**

The *Heritage Act* is one of the more important pieces of legislation as it allows for the *establishment and registration of heritage agreements.* The Act establishes a State Heritage Authority to administer the Act; the authority has one of its seven members nominated by the Local Government Association (s4). The functions of the authority as outlined in the Act include providing advice and assistance to councils on heritage conservation matters, and 'to encourage all levels of government to provide incentives (apart from financial assistance) for heritage conservation' (s5). This is a clear recognition that incentives can be important in encouraging conservation.

Places considered to be of heritage value<sup>50</sup> can be nominated and may, if the nomination is successful, be placed on the Heritage Register. The register also includes places which are designated on a development plan as places of local heritage value, and records of heritage agreements (s14).

The Minister may enter a *heritage agreement* with a landowner of a registered place or a State Heritage Area. Such an agreement attaches to the land and is binding on the current owner (s32). An agreement can contain any provision 'to promote the conservation of registered places and State Heritage Areas and public appreciation of their importance to South Australia's cultural heritage' (s33). Provisions may include a restriction on the use of the land, and a remission of rates and taxes in respect of the land (a remission of council rates can only be included when the council is a party to the agreement) (s33). Once an agreement has been entered, it must be noted on the title of the land (s34). The Act then provides for offences for damaging a registered place, or for not complying with a stop-work order. Where such offences are committed, the Environment, Resources and Development Court can make an order prohibiting development on that land for up to 10 years. Such an order can, however, only be made after the council, in whose jurisdiction the land is located, is given the opportunity to make a submission to the court on the issue (s38).

Once again, this Act limits the ability of local governments to exercise their decision-making powers with respect to places listed on the register.

#### 7.4.4 **Forestry Act 1950**

The Forestry Act provides for the creation and management of State forests in South Australia. The Governor can proclaim Crown land to be a *forest reserve* or, for 'purposes relating to the conservation, development and management of land supporting

native flora and fauna, declare a forest reserve, or part of a forest reserve, to be a *native forest reserve*' (s3). Once an area is declared a forest reserve or a native forest reserve, the *Minister has full control and responsibility for its management* (s9). This removes the management of these reserves from the council if the council had responsibility for the land as Crown land. Section 17 provides that trees may be removed or cut down on any road adjoining a forest reserve to prevent fire, but if the road is a council road, the council must be given notice, and will then be able to make submissions on the matter (s17).

#### 7.4.5 **Pastoral Land Management and Conservation Act 1989**

The Pastoral Land Management and Conservation Act provides for the management of land which is used for 'the pasturing of stock and other ancillary purposes' (s3). The objects of the Act, as stated in section 4, include the *monitoring of the condition of pastoral land, the prevention of degradation, and rehabilitation of land*. Pastoral land can be leased under the Act (s19), and the lessee is then under a *duty to prevent land degradation and carry out good land management practices* (s7). The lease can include certain specified conditions, although none specifically refer to vegetation management. However, as part of the conditions, it can be implied that management of the native vegetation is required (s22). Part of good land management practice should be the management of native vegetation. Only the land management conditions within a lease can be varied (s22), but the lessee must be given notice of the change in conditions at least four months before the variation takes effect (s26). If a breach of a condition occurs, the lessee may be fined (up to \$10 000) or the lease may be cancelled (s37). The Act also creates an offence for cutting down, lopping branches from or otherwise damaging any live tree on pastoral land (s57). This

50. Section 16 states that 'A place is of heritage value if it satisfies one or more of the following criteria: (a) it demonstrates important aspects of the evolution or pattern of the State's history; or (b) it has rare, uncommon or endangered qualities that are of cultural significance; or (c) it may yield information that will contribute to an understanding of the State's history; or (d) it is an outstanding representative of a particular class of places of cultural significance; or (e) it demonstrates a high degree of creative, aesthetic or technical accomplishment or is an outstanding representative of particular construction techniques or design characteristics; or (f) it has strong cultural or spiritual associations for the community or a group within it; or (g) it has a special association with the life or work of a person or organisation or an event of historical importance.' Native vegetation is most likely to fall within the first or second category; however, it would be easier to bring vegetation within these sections if they were not restricted to places of cultural significance, and they included areas of environmental significance.

Act has little impact on the role of local government, as it concerns Crown land, which is outside the jurisdiction of local government.

#### **7.4.6 South Eastern Water Conservation and Drainage Act 1992**

As with the Pastoral Land Management and Conservation Act, there are no specific requirements for the management of native vegetation. They can, however, be implied within the Act, as the objects cannot be met without considering the native vegetation of the area. The objectives are stated in section 7 as:

- (a) the prevention or minimisation of damage to agricultural production and the natural environment caused by flooding within the South East;
- (b) the improvement of the soil quality and the productiveness generally of rural lands in the South East; and
- (c) the enhancement or development of natural wetlands and the natural environment generally in the South East.'

The native vegetation of an area is of great importance when considering drainage, soil run-off and erosion. The Act allows the South Eastern Water Conservation and Drainage Board, established under the Act, to levy contributions from landholders who own more than 10 hectares. The levy is, however, not able to be imposed on private landholders where their land is already subject to a heritage agreement under the Native Vegetation Act (s34A). This provision reinforces the fact that water management cannot occur without considering the vegetation of an area. It is unclear the extent to which a local government may work with, or be limited by, the actions of the board under this Act.

#### **7.4.7 National Parks and Wildlife Act 1972**

The National Parks and Wildlife Act primarily concerns the establishment and management of reserves on Crown land under State jurisdiction. The role of local government is minimal, but it is

important to consider the types of reserves which can be created under the Act.

The Governor may, by proclamation, declare an area of Crown land to be a *national park*, if he/she considers it to be of 'national significance by reason of the wildlife or natural features of that land'. A resolution passed by both Houses of Parliament is also needed. Similarly, a proclamation and resolution is required to abolish a national park (ss27–28).

If the Governor considers an area should be 'protected or preserved for the purpose of conserving any wildlife or the natural or historic features of that land', it can be proclaimed, after a resolution of both Houses of Parliament, a *conservation park* (ss29–30).

Where, in the Governor's opinion, Crown land should be preserved for the conservation of wildlife and management of game, a *game reserve* can be proclaimed. Only if the reserve is to be abolished or its boundaries altered will a resolution of Parliament be necessary (ss31–32). Similarly, where Crown land should, in the Governor's opinion, be conserved and managed for public recreation and enjoyment, the area can be proclaimed a *recreation park* (s33–34).

*Regional reserves* can also be proclaimed for the purpose of conserving any wildlife or the natural or historical features of the land, while at the same time permitting the utilisation of the natural resources of the land (s34A).

Section 35 states that the Minister has the control and administration of all reserves under the Act (unless a trust has been established to manage the reserve), and title vests in the Crown. This power of management is then delegated to the Director of National Parks and Wildlife (s36). Objectives for the management of reserves are then specified in section 37.<sup>51</sup> Management plans have to be prepared which have regard to the development plan for that area (s38). It is through the development plans that councils have their only input into the management of reserves under the National Parks and Wildlife Act, as it is the local

government which prepares the development plan for an area.

The only other way that the provisions of the Act may impact on the role of local governments is through the provisions relating to *sanctuaries*.

Section 44(1) states that:

If the Minister is of the opinion that it is desirable to conserve the animals or plants for which any land is a natural habitat or environment and:

- (a) where the land is reserved for or dedicated to, a public purpose, the person to whom the care, control and management of that land has been committed has consented to a declaration under this section; or
- (b) where the land is private land, the owner and occupier of the land have consented to a declaration under this section, the Minister may, by notice in the *Gazette*, declare the land to be a sanctuary.

*Where land is declared a sanctuary, it is then an offence for a person other than the owner of the land to take a native plant from the area, unless a permit is sought from and granted by the Minister (s45).*

Section 47 allows for broader protection of native plants, stating that:

a person must not take a native plant:

- (a) on any reserve, wilderness protection area or wilderness protection zone; on any other Crown land;
- (b) on any land reserved for or dedicated to public purposes; or
- (c) on any forest reserve

unless a permit is granted by the Minister under section 49. A breach of section 47 attracts a fine of up to \$10 000 or two years imprisonment. The amount of the penalty varies according to the species taken; for example, if the species is listed as endangered in Schedule 7 to the Act, the maximum fine is \$10 000, but where the species is listed as rare in Schedule 9, or vulnerable in Schedule 8, the penalty is less.

Regulations can also be made by the Governor restricting, regulating or prohibiting certain activity, as necessary for the purposes or objects of the Act (s80).

#### **7.4.8 Land Acquisition Act 1969**

The Land Acquisition Act outlines the procedures for the acquisition of land by the State or by a government authority such as a local government. It establishes a notification and objection procedure as well as outlining the factors for determining the amount of compensation to be paid to a landholder.

#### **7.4.9 Animal and Plant Control (Agricultural and Other Purposes) Act 1986**

The Animal and Plant Control (Agricultural and Other Purposes) Act provides primarily for the control of exotic plants and animals which are listed under the Act as controlled species. Control boards can be set up for a single council area, or can incorporate the area of several councils, to assist with the development and implementation of control plans. In regard to native vegetation, the only relevant section is section 64 which states that:

64. (1) A person shall, in taking measures for the destruction or control of animals or plants, take all reasonable steps to ensure

- (a) that no native trees or shrubs are destroyed or unnecessarily damaged;

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51. The objectives of management are '(a) the preservation and management of wildlife [where wildlife is defined in section 5 to include native plants and native animals]; and (b) the preservation of historic sites, objects and structures of historic or scientific interest within reserves; and (c) the preservation of features of geographical, natural or scientific interest; and (d) the destruction of dangerous weeds and the eradication or control of noxious weeds and exotic plants; and (e) the control of vermin and exotic animals; and (f) the control and eradication of disease of animals and vegetation; and (g) the prevention and suppression of bush fires and other hazards; and (h) the encouragement of public use and enjoyment of reserves and education in, and a proper understanding and recognition of, their purpose and significance; and (i) generally the promotion of the public interest; and (j) in relation to managing a regional reserve, to permit the utilisation of natural resources while conserving wildlife and the natural or historic features of the land.'

(b) that damage to or destruction of native vegetation (other than trees or shrubs) is kept to a minimum; and

(c) in addition, in the case of measures taken on road reserve, that damage to or destruction of non-native vegetation (other than plants subject to destruction or control under this Act) is kept to a minimum. Penalty: \$2,000.

Therefore, where pest control measures are in place, the control board and local government should not advocate acts which may cause unnecessary damage to, or destruction of, native vegetation.

#### **7.4.10 Water Resources Act 1997**

The Water Resources Act repeals the *Catchment Water Management Act 1995*. The Act deals primarily with the use and regulation of the use of water. Those people administering the Act must have regard for the need, amongst other specified requirements, 'to maintain or improve the quality of naturally occurring water with resulting benefits to other natural resources of the State including the land and its soil, native vegetation and native animals...' (s6(2)(b)(i)). It deals with the licensing and allocation of water; the management by the Water Resources Council, established under the Act, of a State Water Plan (ss50 –52); and the establishment of Catchment Water Management Boards (s53). It also imposes a *duty on local governments that, when carrying out their duties under this or other legislation, they do so in a way consistent with the local water management plan of the council* (s86). This section is the only one that may influence the decisions that need to be made by local governments. This duty may extend to *issues concerning vegetation management, as the clearing of vegetation near a watercourse or river may affect the flow of that river* and, therefore, the supply of water to others in the catchment area. In practice however, the link may not be important, and the Act may only be considered when the actions of a local government will directly affect the catchment and water supply of an area.

*Catchment Water Management Boards* must establish catchment water management plans for

their areas (s92). These plans must address issues concerning the management of water resources, as well as identifying any changes which may be necessary to the development plan applicable in the area, and identify land adjoining or adjacent to a watercourse or lake which should be vested in the board. The plan must, however, as far as practicable, be consistent with any relevant development plan, management plan under the National Parks and Wildlife Act, guidelines under the Native Vegetation Act, district plan under the Soil Conservation and Land Care Act and management plan under the *Coast Protection Act 1972* (s92(7)). It would appear from this section that the other management plans will, where inconsistent with a catchment management plan, prevail. This will be of importance where native vegetation is proposed to be cleared for the making of a lake, and should encourage the protection of native vegetation along watercourses. Under the Act, levies can also be imposed for the provision of water.

#### **7.4.11 Coast Protection Act 1972**

The Coast Protection Act (s4) defines the coast as:

all land that is:

within the mean high water mark and the mean low water mark on the seashore at spring tides;

(a) above and within one hundred metres of that mean high water mark;

(b) below and within three nautical miles of that mean low water mark; or

(c) within any estuary, inlet, river, creek, bay or lake and subject to the ebb and flow of the tides; or

(d) declared by regulation to constitute part of the coast for the purposes of this Act.

This is a very broad definition and will include areas of coastal vegetation. It is therefore necessary to examine the provisions of this Act in relation to such areas and the impact of this legislation.

The Act establishes a Coastal Protection Board (s6), which has various duties, including the protection

and restoration of the coast from erosion, damage, deterioration, pollution and misuse (s14). *There is no specific mention of the protection of native vegetation, however, this can be inferred from these duties as a loss of vegetation will lead to erosion, damage and deterioration.*

The board will prepare a management plan for each coast protection district, and local councils whose areas fall within these districts will be notified of the draft plan and allowed to make representations in respect of the plan (s20). After a process of public consultation and hearings, the Governor may, by proclamation, declare the management plan which was submitted to him by the Minister to be an approved plan (s20). There are no requirements within the legislation stating the weight which must be placed on the management plan by a council if, for example, it was considering an application for development within a coastal protection district.

*The Act contains provisions enabling a council to receive financial assistance from the board to acquire land for the purpose of protecting, restoring or developing the land (s32A). This would enable a council to receive some financial assistance where it wished to conserve native coastal vegetation.*

#### **7.4.12 Environment Protection Act 1993**

The objectives of the Environment Protection Act are stated in section 10 as including promoting the principles of ecologically sustainable development and applying a precautionary approach to the assessment of the risk of environmental harm. The Act establishes the Environment Protection Authority (s10), whose functions include preparing environmental protection policies, monitoring the environment and environmental evaluation programs, and consulting with local governments in carrying out these roles (s13). Section 25 creates a general environmental duty: 'A person must not undertake an activity that pollutes, or might pollute, the environment unless the person takes all reasonable and practicable measures to prevent or minimise any resulting environmental harm.'

Where a *proposed development is one of environmental significance*, it is an offence under

this Act to carry out that activity except in accordance with a licence granted under the Act (s36). When an application for development approval is referred to the Environment Protection Authority under the Development Act, it must consider the application, having regard to the principles of ecologically sustainable development (s57).

The Act creates offences for causing serious environmental harm, material environmental harm and causing an environmental nuisance (ss79, 80 and 82). The Environment Protection Authority can also issue an environmental protection order to ensure compliance with the Act (s93).

This Act is important for local government in only minor ways: local government may be prosecuted for a breach of the Act, and must refer a development application which is of environmental significance to the Environment Protection Authority for consideration.

#### **7.4.13 Country Fires Act 1989**

The Country Fires Act imposes a duty on rural councils in regard to the prevention of fire. Section 41 states that:

- (1) A rural council that has the care, control or management of land in the country must take reasonable steps to protect property on the land from fire and to prevent or inhibit the outbreak of fire on the land, or the spread of fire through the land.
- (2) A rural council must, in acting under subsection (1), take into account proper land management principles.

The practical effect of this duty is that pressure can be placed upon councils to clear native vegetation on roadsides and other council-controlled areas.<sup>52</sup> If this is indeed the case, consideration should be given to subsection 2, which requires councils to take into account proper land management principles.

52. Neil Collins, South Australian Department for Environment, Heritage and Aboriginal Affairs (1998, pers. comm.).

## 7.5 Summary of opportunities

Some legislative amendments and clarification of the existing position would ensure that the maximum number of incentives are able to be offered for vegetation conservation by local governments in South Australia.

Table 7.2 outlines these in further detail. It also includes a reference to by-laws and joint authorities which can be established under the Local Government Act. These are important as they allow local governments to work under their current powers to pass by-laws to protect native vegetation on council-owned and council-managed land, and

allow for the establishment of regional local governments to provide for vegetation management on a regional level.

As shown in Table 7.2, some incentives can currently be offered by local governments in South Australia. However, to increase the range of incentives which may be offered, steps may be taken by both State and local governments. There is a need for some legislative amendments, and clarification of State policies. It is also important that encouragement and support is available to local governments. The current review of the local government legislation is an opportunity whereby these issues can be addressed.

**Table 7.2: Opportunities available to local governments to offer incentives for vegetation conservation**

| Incentive                                  | Amendment  |
|--|--|
| Environmental levy                         | Amend definition of service in the Local Government Act (s177) to include environmental services, or pass regulation defining the environment as a service for the purpose of section 177<br>Revenue raised through environmental levies should not be subject to rate capping |
| Management agreement                       | Policy support/encouragement   |
| Covenant                                   | N/A as are currently available   |
| Grants to individuals and community groups | N/A as are currently available   |
| Rate rebates                               | Encourage use of the Development Act (s57) to allow a remission of rates where a land management agreement is entered into by the landholder   |
| Acquisition and sale of land               | Clarify that it is possible to purchase land for conservation<br>Clarify that it is possible to resell land  |
| By-laws                                    | Encourage the making of by-laws under the Local Government Act (s667) to protect native vegetation on council-owned and council-managed land   |
| Joint authorities                          | Encourage the establishment of regional local governments under the Local Government Act (s200) to provide regional vegetation planning  |