

NATIVE VEGETATION CONSERVATION FACTSHEETS

ADDING VALUE TO THE NATURAL ASSETS OF NEW SOUTH WALES

Riverina Highlands Regional Vegetation Management Plan 2003 - Exclusions and exemptions

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Regional Vegetation Management Plans

The Riverina Highlands Regional Vegetation Management Plan 2003 (RHRVMP) is a regulatory plan made under the *Native Vegetation Conservation Act 1997* (the NVC Act). The RHRVMP contains exclusions and exemptions for the clearing of native vegetation in the Riverina Highlands vegetation region, consistent with the NVC Act.

The clearing of native vegetation on land listed under section 9 of the NVC Act and clearing listed under section 12 of the NVC Act are not subject to the provisions of the NVC Act or the RHRVMP. These are called **exclusions**.

Generally, clearing not covered by the exclusions will require development consent from the Department of Sustainable Natural Resources (DSNR). However, clearing for certain purposes may be exempted by the RHRVMP from the requirement for development consent, eg the lopping of native vegetation for drought fodder. These are called **exemptions** and they permit specific clearing activities to be undertaken without requiring development consent. **Exemptions** may be different for different RVMPs.

Any clearing carried out without consent **must** comply with the provisions applicable to the exclusions and exemptions. If clearing without consent is in breach of an exclusion or an exemption, an offence has been committed for which the maximum penalty is \$1.1 million.

This fact sheet provides a summary of exclusions and exemptions.

It is the responsibility of the landholder to become familiar with the exclusions and exemptions in the RHRVMP and to ensure that the proposed clearing activity fits within the parameters specified. If the proposed clearing does not meet the exclusion and/or exemption requirements, landholders will need to apply to

the DSNR for Development Consent to clear native vegetation. Landholders are encouraged to seek clarification from DSNR if they are unsure of the application of any exclusion or exemption.

Exclusions

An application to for development consent to clear will be required by the Department of Sustainable Natural Resources, unless:

- the land to be cleared is in a local government area, or other area, that is totally excluded from the Act
- the land to be cleared is in a local government area partly excluded from the Act and the the land is not Regional Protected Land
- the clearing activity is excluded from the Act and the RHRVMP
- the clearing is consistent with an approved code of practice
- the clearing is exempt from development consent.

Land excluded from the NVC Act

Section 9 of the NVC Act lists "land excluded from the operation of the NVC Act". Clearing can occur in these areas without reference to the RHRVMP. The relevant exclusions are:

- land that is within a zone designated 'residential' (but not 'rural residential'), 'village', 'township', 'industrial' or 'business' under an environmental planning instrument
- land to which SEPP 14 (*Coastal Wetlands*) or SEPP 26 (*Littoral Rainforests*) applies
- land that is a State forest, national forest, flora reserve or timber reserve under the *Forestry Act 1916*
- land that is acquired under section 15 of the *Forestry Act 1916* for the purposes of a State forest (this does not include land acquired for the purpose of a Timber Plantation within the meaning of the *Timber Plantations (Harvest Guarantee) Act 1995*)

- land that is dedicated or reserved under the *National Parks and Wildlife Act 1974*
- land that is acquired under section 145 of the *National Parks and Wildlife Act 1974* for the purpose of obtaining land for dedication or reservation under that Act or for the purpose of preserving, protecting, and preventing damage to relics or Aboriginal places
- land that is subject to a conservation agreement entered into under Division 7 of Part 4 of the *National Parks and Wildlife Act 1974*
- land that is subject to an interim protection order made under Part 6A of the *National Parks and Wildlife Act 1974*
- land to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies
- land that is ‘critical habitat’ within the meaning of the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*.
- any clearing authorised under the *Mining Act 1992*
- any clearing authorised under the *Petroleum (Onshore) Act 1991*
- any clearing that consists of plantation operations within the meaning of the *Plantations and Reafforestation Act 1999* on an authorised plantation in accordance with any conditions of the authorisation and with the Plantations and Reafforestation Code under that Act,
- any clearing that involves the removal or lopping of any tree or other vegetation in accordance with section 88 of the *Roads Act 1993*
- any clearing carried out in accordance with a consent under Division 3 of Part 9 of the *Roads Act 1993*
- any clearing carried out in accordance with a permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948*. (RFI Act)¹
- any clearing carried out in accordance with a licence, permit, authority or approval under the *Water Act 1912* (WA)²

Clearing excluded from the NVC Act

Section 12 of the NVC Act lists types of “clearing excluded from the operation of the NVC Act”. Clearing can occur in accordance with these exclusions without reference to the RHRVMP. The relevant exclusions are:

- any clearing authorised under the *State Emergency and Rescue Management Act 1989* in relation to an emergency within the meaning of that Act
- any clearing authorised under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act
- any clearing carried out in accordance with a bushfire management plan under the *Rural Fires Act 1997*
- any clearing authorised under the *Noxious Weeds Act 1993*
- any clearing carried out in accordance with a property management plan approved by the Director General of National Parks and Wildlife for the purposes of the *Threatened Species Conservation Act 1995*
- any clearing authorised under a licence issued under Division 1 of Part 6 of the *Threatened Species Conservation Act 1995*
- any clearing that is, or that is part of, designated development within the meaning of the *Environmental Planning and Assessment Act 1979*
- any clearing authorised to be carried out under Division 3 or 4 of Part 7 of the *Fisheries Management Act 1994*
- any clearing authorised under a licence issued under Division 6 of Part 7A of the *Fisheries Management Act 1994*
- any clearing carried out in accordance with a licence issued under section 131 of the *National Parks and Wildlife Act 1974*

Exemptions

Clearing exempt from the need to obtain Development Consent

Schedule 4 of the RHRVMP provides a number of exemptions for vegetation clearing, to allow landholders to undertake day to day management of their properties without the need for Development Consent.

Exemption from the need to obtain Development Consent will vary depending on the status of the land:

- where the land is Regional Protected Land, only the exemptions applying to Regional Protected Land apply
- where the land is within a Regional Linear Reserve, only the exemptions applying to Land within a Regional Linear Reserve apply
- where the land is unclassified land, only the exemptions applying to unclassified land apply

Some exemptions have conditions and guidelines associated with them which tell you how to clear to comply with that exemption

As the conditions attached to exemptions are part of the exemptions, they **must** be complied with. Therefore, exemptions must always be read in conjunction with any conditions.

¹ The provisions under the RFI Act in relation to 3A permits will be carried over to the *Water Management Act 2000* (WMA) in the near future.

² The provisions in relation to licences, permits, authorities and approvals under the WA will be carried over to the WMA in the near future.

Exemptions will vary dependent on the vegetation management area (VMA) in which they are applied. The VMAs are listed in the RHRVMP together with the relevant exemptions. If unsure, landholders are advised to check with DSNR to determine the VMA applicable to the proposed area of clearing.

The VMAs in the Riverina Highlands vegetation region and the exemptions that apply to those areas are listed in the **RHRVMP Summary Clearing Control Table** attached.

Schedule 4 Descriptions of exemptions

(Clause 12 and Schedule 2)

1 Beneficial conservation management

Management activities undertaken on land to ensure the maintenance and enhancement of the conservation values of the site, but limited to periodic grazing for grassland management, burning, weed removal and restoration of native ecosystems (in each case, in accordance with the *Beneficial Management Conservation Management Exemption Guidelines for Riverina Highlands* obtainable from the Department of Sustainable Natural Resources).

2 Maintenance of fence lines on regional protected land

- (1) The clearing of regional protected land for the maintenance of fence lines.
- (2) Any tree that is affected must have a diameter at breast height, within the meaning of the *Plantations and Reafforestation (Code) Regulation 2001*, of less than 50 centimetres, and be not more than ten metres from either side of the fence line.

Note. That Regulation states that “diameter at breast height” means the measurement of the diameter of a tree made:

- (a) at a height of 1.3 metres above ground level (measured from the ground level of the up slope side of the tree if the tree is on a slope), and
 - (b) at right angles to the axis of the tree.
- If the tree is branched or deformed at 1.3 metres above the ground level, the measurement must be taken at the nearest point above or below that point, where the tree becomes more cylindrical.

3 Clearing for rural structures on unclassified land

- (1) The clearing of native vegetation to a minimum extent if it is necessary for the construction, operation or maintenance of rural structures.
- (2) For the purposes of this item, **rural structures** include farm dams, tracks, bores, windmills, fences, fence lines, stockyards, loading ramps, dwellings and sheds, but does not include temporary fences or temporary fence lines.
- (3) Where the rural structure is a fence or track, clearing

of native vegetation may be carried out up to a maximum of 10 metres either side of the fence or track. However, the clearing may include trees or limbs of trees outside that limit if they are likely to cause serious damage to the fence.

- (4) Where the rural structure is a dwelling, this exemption applies to a maximum of 0.4 hectare.
 - (5) Any tree that is affected by lopping or other cutting under this item must have a diameter at breast height, within the meaning of the *Plantations and Reafforestation (Code) Regulation 2001*, of less than 50 centimetres.
 - (6) If more than 0.5 ha of Yellow Box, Blakely’s Red Gum, and/or White Box is to be removed in any calendar year, on any property, the activity may be carried out without consent only after notice has been given to the nearest office of the Department of Sustainable Natural Resources, prior to the commencement of any removal.
- Note.** Notice is relevant to monitoring potential impact on the habitat of the Superb and Swift Parrot.
- (7) This item does not allow progressive clearing of the property so that it may be used for agriculture or otherwise.

4 Eucalyptus leaf cutting

In areas previously cut for eucalyptus oil leaf (for the purpose of distilling eucalyptus oil from the leaves), the cutting of *Eucalyptus dives* or *E. radiata* regrowth trees or coppice stems with a diameter at breast height, within the meaning of the *Plantations and Reafforestation (Code) Regulation 2001*, of less than 25 centimetres, but only for the purpose of distilling eucalyptus oil from the leaves.

5 Horticultural harvesting or pruning

Incidental clearing associated with harvesting or pruning operations in association with the management of an existing orchard, vineyard, or other horticultural enterprise, but not clearing for the establishment of an orchard, vineyard or other horticultural enterprise.

6 Indigenous cultural practices

The utilisation of native plant species for traditional Wiradjuri or Walgalu cultural purposes (such as for making tools, implements, food, fibre or medicine), but only for non-commercial use.

7 Minimal tree cutting

- (1) Where less than 40 stems occur in each individual hectare (10,000 square metres) of the property at the commencement of a calendar year, the cutting down of no more than two trees per hectare, up to a maximum of 10 trees for the whole property during the calendar year, if the timber is used (for example, for fence posts and firewood) only on the property on which they are cut down.

- (2) Where 40 or more stems occur in each individual hectare (10,000 square metres) of the property at the commencement of a calendar year, the cutting down during the calendar year of not more than 7 trees per hectare of the whole property, if the timber is used (for example, for fence posts and firewood) only on the property on which they are cut down.
- (3) The trees to be cut down must have a diameter at breast height, within the meaning of the *Plantations and Reafforestation (Code) Regulation 2001*, of less than 50 centimetres.
- (4) In this item, **stem** means a tree with a diameter at breast height, within the meaning of the *Plantations and Reafforestation (Code) Regulation 2001*, of 20 centimetres or more.
- (5) This item does not allow progressive clearing of a property so that it may be used for agriculture or otherwise.

8 Noxious weed eradication

- (1) The clearing of vegetation declared to be a noxious weed under the *Noxious Weeds Act 1993*.
- (2) The clearing of other vegetation in the course of destroying noxious weeds but only:
 - (a) to the minimum extent necessary to destroy noxious weeds, and
 - (b) in accordance with the *Noxious Weed Control Exemption Guidelines* obtainable from the Department of Sustainable Natural Resources.

9 Pest control

The clearing of vegetation to the minimum extent necessary for control of burrowing and den-making pests.

Note. Landholders may clear native vegetation to the minimum extent necessary for the control of pests within the meaning of Part 11 of the *Rural Lands Protection Board Act 1998* and for the control of foxes.

10 Planted native vegetation

The clearing of native vegetation planted for forestry, agriculture, agro-forestry, wood-lots, gardens and horticultural purposes.

11 Private native forestry

- (1) The clearing of native forest dominated by Alpine Ash (*Eucalyptus delegatensis*), Mountain Gum (*E. dalrympleana*), Ribbon Gum (*E. viminalis*), Eurabbie (*E. globulous ssp. bicostata*), Red Stringybark (*E. macrorhyncha*), Broad Leafed Peppermint (*E. dives*) or Narrow Leafed Peppermint (*E. radiata*) in the course of its being selectively harvested on a sustainable basis or managed for forestry purposes (timber production) consistent with the *Guidelines For Sustainable Harvesting of Dry to Moist Open Sclerophyll Forest within Riverina Highlands of New South Wales*, available from the Department of Sustainable Natural Resources.

- (2) The minimum forest tree crown cover, after harvesting, must be at least 40% of what would be expected for an undisturbed site characterised by similar tree species and in a similar location.
- (3) The volume harvested must not exceed the equivalent of an average of 3 cubic metres per hectare per annum over a period of 20 years or more.
- (4) This activity may be carried out without consent only if the Department of Sustainable Natural Resources has been given notice of the proposed clearing prior to the commencement of clearing.
- (5) Where the volume harvested will be more than 500 cubic metres of product in total on any contiguous landholding in any one year period, this activity may be carried out without consent only if a forestry management plan documenting forest management practices and harvesting operations has been prepared. If a forestry management plan is required for any clearing but is not produced at the request of the Director-General of the Department of Sustainable Natural Resources, this item does not allow the clearing until after it is produced.
- (6) A forestry management plan should be prepared by a suitably qualified person and contain aerial photographs, topographic maps and written information that cover the following:
 - (a) **Land information:**
 - (i) description of the area to which it relates,
 - (ii) a locality plan and identification of access roads,
 - (iii) identification of natural features (drainage lines, swamps, soil types, vegetation types, significant landscape, cultural and heritage values, threatened species etc),
 - (iv) identification of improvements (buildings, roads, bridges, drainage line crossings, fences, gates, powerlines, dams etc).
 - (b) **Tending/silviculture details:**
 - (i) the history and documentation of previous logging or disturbance,
 - (ii) a detailed description of vegetation types, growth and form characteristics,
 - (iii) an explanation of proposed noxious weed and pest animal controls,
 - (iv) a silviculture strategy, including a tree marking program,
 - (v) a fire management strategy.
 - (c) **Harvesting details:**
 - (i) a description of the location of harvesting operations, major snig tracks, and log dumps,
 - (ii) details of conservation measures, including number and type of trees to be protected, locations of drainage line crossings and exclusion areas, such as filter strips,

- (iii) a description of the effect of weather restrictions on harvesting operations, and on road maintenance,
- (iv) a timetable showing the period in which logging will occur,
- (v) details about the intensity of the operation, species to be logged, types of machinery to be used, product types, and felling and extraction procedures,
- (vi) details of health and safety measures.

12 Public utility clearing

Minimal clearing of regional protected land or native vegetation if necessary for the maintenance of public utilities (associated with the provision of power lines, transmission of electricity, water, gas, electronic communications or the like) or if there is imminent threat of personal injury or damage to property.

Note. *Imminent threat* is referred to in the *Rural Fires Act 1997*.

13 Regrowth removal

- (1) The removal of vegetation, whether seedlings or regrowth, of less than 10 years of age if the land has been previously cleared for cultivation, pasture or forestry plantation purposes, and is not part of a wetland. Any trees to be cleared must have a diameter at breast height, within the meaning of the *Plantations and Reafforestation (Code) Regulation 2001*, of less than 20 centimetres.
- (2) For areas of regional protected lands—steep and erodible land, regrowth can only be cleared to a maximum extent of two hectares per calendar year, on any property.
- (3) If more than 0.5 hectare of seedlings or regrowth of Yellow Box, Blakely’s Red Gum, and/or White Box is to be removed in any calendar year, on any property, the activity may be carried out without consent only after notice has been given to the Regional Vegetation Coordinator, in the nearest office of the Department of Sustainable Natural Resources, prior to the commencement of any removal.

Note. Notice is relevant to monitoring potential impact on the habitat of the Superb Parrot and Swift Parrot.

- (4) This item does not allow progressive clearing of the property so that it may be used for agriculture or otherwise.

14 Stock fodder provision

- (1) The lopping of Kurrajong (*Brachychiton spp.*) and Wattles (*Acacia spp.*) for stock fodder within part of the region when NSW Agriculture’s current *Regional Review of Seasonal Conditions and Outlook for Agriculture* indicates that part of the region is suffering from drought conditions.
- (2) The lopping must not cause irreversible damage to the remaining vegetation that is lopped.

Definitions

Following are definitions of some of the terms used in this factsheet, in particular, the “Summary Clearing Control Table”.

clearing native vegetation means any one or more of the following:

- (a) cutting down, felling, thinning, logging or removing native vegetation,
- (b) killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation,
- (c) severing, topping or lopping branches, limbs, stems or trunks of native vegetation,
- (d) substantially damaging or injuring native vegetation in any other way.

crown separation is calculated, for the purpose of determining whether a woody native plant is included in a patch, by reference to the crown diameter of each individual woody native plant. In determining whether a woody native plant lies within the required crown separation of the nearest woody native plant (so as to be included in the patch), the crown diameter of the more outlying of those 2 plants (that is, outlying in relation to the native woody plant that is used as a starting point) is used. The boundary of the patch is the line that:

- (a) contains the projected crowns of all the woody native plants within the patch, and
- (b) joins the outer drip line of each outermost crown of the patch with that of the nearest outermost crown of the patch.

forb means a non-woody plant other than a grass, sedge or rush.

good condition means with relatively few weeds (including pasture grasses), with mostly native ground flora (including palatable, succulent plants), and containing large (standing and fallen, living and dead) hollow-bearing trees (which feature is not applicable in determining the condition of grasslands). That is, a community which is basically self-maintaining with minimal inputs.

grassland means vegetation dominated by grasses and forbs, with less than 10% tree and shrub cover.

grassy white box woodland in good condition means a remnant patch (or an area with evidence of the previous presence of a remnant patch) with an over-storey of mostly mature White Box trees and their associates (Yellow Box, Blakely’s Red Gum, Apple Box, Red Stringybark), where maximum crown separation is less than two crown widths, the groundcover mainly is a rich flora of native grasses and forbs with at least 4 of the indicator high conservation value grassland species being present (see Table in Schedule 3 of the RHRVMP)

Note. If White Box is absent, there must be species present that are strong evidence of its original presence.

grassy yellow box woodland in good condition means a remnant patch with an over-storey of mostly mature Yellow Box trees and their associates (White Box, Blakely's Red Gum, Apple Box, Red Stringybark, Candlebark, Snow Gum), where maximum crown separation is less than two crown widths, and the groundcover mainly is a rich flora of native grasses and forbs with at least 4 high conservation value grassland indicator species being present.

groundcover means any type of herbaceous vegetation.

patch (or **clump**) means a group of 2 or more woody native plants, with each of those plants lying within not more than 2 crown widths of the nearest native woody plant.

River Red Gum communities means remnant patches with an over-storey of mostly mature River Red Gum trees where the average maximum crown separation is less than one crown width, and the groundcover is mainly native grasses and forbs.

Guiding principles

The guiding principles for the Riverina Highlands region are as follows:

- (a) that biodiversity within the region be maintained,
- (b) that native vegetation with high conservation value be protected and conserved,
- (c) that regional protected land—steep and erodible land be protected from land degradation,
- (d) that clearing contribute to the achievement of targets that will not result in a net loss in the types of native vegetation within the region and will achieve a net gain in native vegetation of the types that were depleted in the region at the commencement of this plan,
- (e) that riparian vegetation and regional streamside within all regional protected land be protected,
- (f) that cultural heritage values be protected,
- (g) that water catchments be protected from salinity impacts in accordance with the principles of ecologically sustainable development within the meaning of the *Protection of the Environment Administration Act 1991*,
- (h) that recommendations made by, and any courses of action set out in, recovery plans and draft recovery plans (within the meaning of the *Threatened Species Conservation Act 1995*) be adhered to,
- (i) that recommendations in Schedule 1 for species be adhered to for the purpose of avoiding or reducing threats described in that Schedule for those species on land identified in that Schedule as primary habitat of those species,
- (j) that biolinks be conserved, managed and enhanced.

Making an application to clear native vegetation

A flow chart is attached to help in deciding whether clearing will require Development Consent.

If the proposed clearing is not covered by an exclusion or an exemption, an application to the Department of Sustainable Natural Resources for Development Consent to clear native vegetation will be required. For information about the application process refer to the RHRVMP Fact Sheet – “*Application for Development Consent to Clear Native Vegetation*” or contact your local DSNR Office

Further information

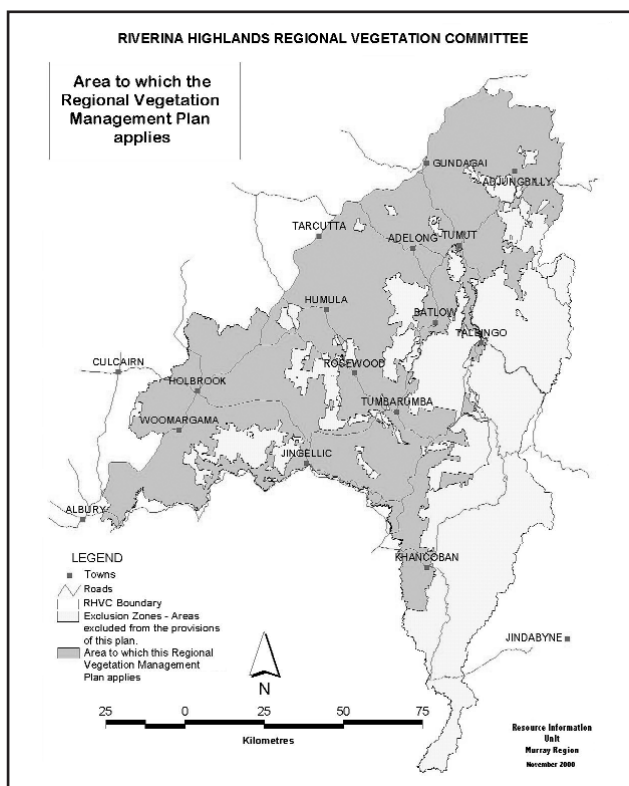
To contact the Riverina Highlands Regional Vegetation Committee or for further information about the Resource Guide, please contact your local DSNR office.

Albury

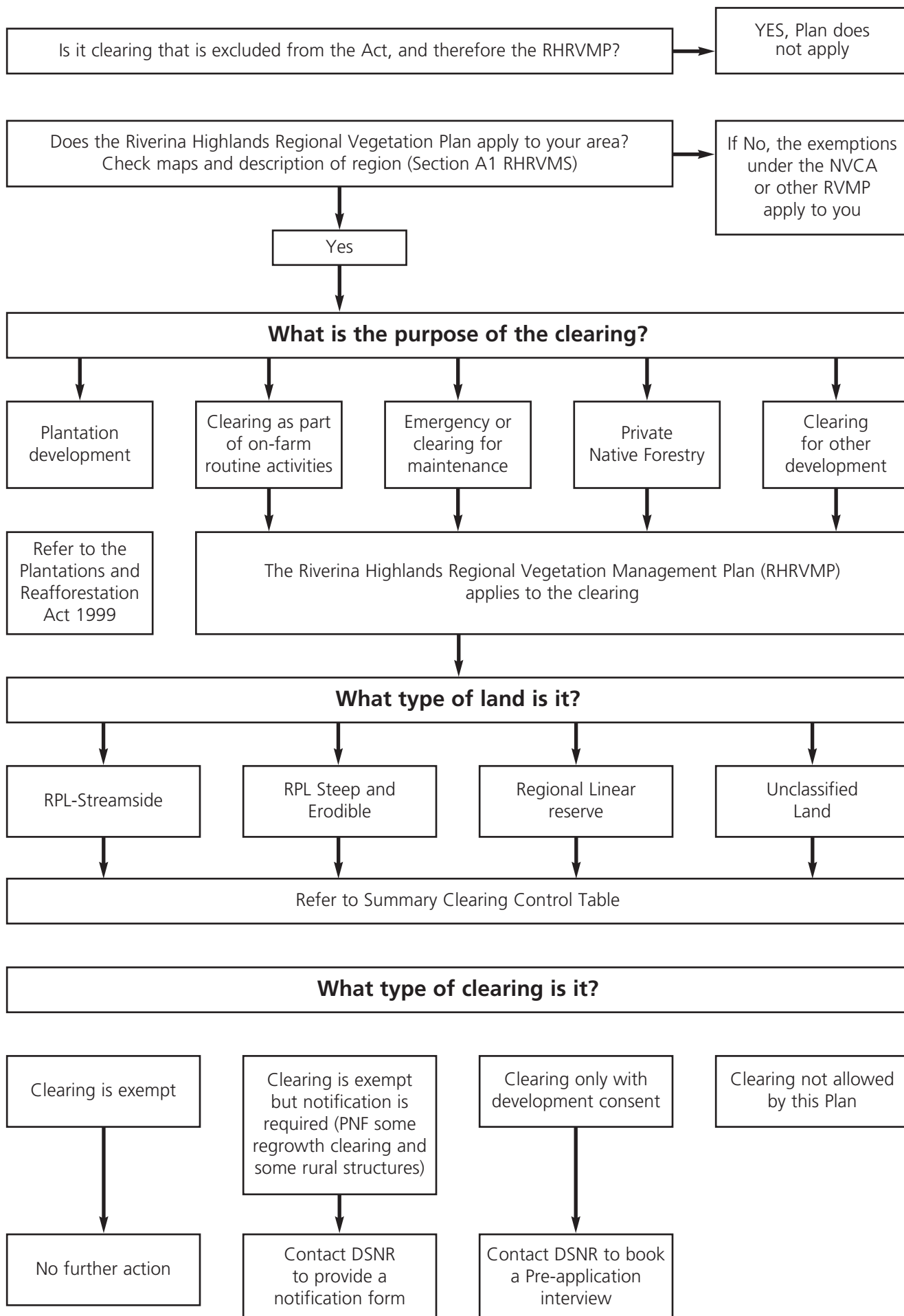
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Does clearing require development consent?



RHRVMP Summary Clearing Control Table

Management areas	1 - Clearing allowed without development consent	2 - Clearing allowed only with development consent	3 - Clearing not allowed by this Plan
Regional Protected Lands - Steep and Erodible Lands	<ul style="list-style-type: none"> • Maintenance of fence lines on regional protected land • Eucalyptus leaf cutting • Horticultural harvesting or pruning • Indigenous cultural practices • Minimal tree cutting • Noxious weed eradication • Public utility clearing • Regrowth removal (2 hectare maximum) • Stock fodder provision 	Any clearing of regional protected land not included in columns 1 or 3	<p>Clearing, on any property in any one calendar year, of a total of more than 2 hectares of grassy white box woodland in good condition (as defined in this Factsheet), excluding any clearing allowed by column 1.</p> <p>Clearing of any regional protected land within sites of threatened flora or ecological communities, being sites identified in recovery plans approved under Part 4 of the Threatened Species Conservation Act 1995, if not included in column 1.</p>
Regional Protected Lands – Streamsides	<ul style="list-style-type: none"> • Beneficial conservation management • Indigenous cultural practices • Noxious weed eradication • Public utility clearing • Maintenance of fence lines on regional protected land 	<p>Clearing of exotic vegetation if not included in column 1</p> <p>Clearing of standing dead timber if not included in column 1</p> <p>Clearing of vegetation for the construction of public utility infrastructure and rural structures on stream-sides (including ramp sites, bridges and pumps) if not included in column 1</p>	Any clearing not included on columns 1 or 2
Regional Linear Reserves	<ul style="list-style-type: none"> • Beneficial Conservation Management • Indigenous Cultural Practices. • Noxious weed eradication • Pest control • Public utility clearing 	Any clearing of native vegetation not included in columns 1 or 3	<p>Clearing, within any regional linear reserve in any one calendar year, of a total of more than 1 hectare of high conservation value native vegetation, excluding any clearing allowed by column 1.</p> <p>In this item, high conservation value native vegetation means native vegetation that the consent authority is satisfied is of high conservation value, as defined in Schedule 3 of the RVMP (see definition in this Factsheet).</p>
Unclassified Land	<ul style="list-style-type: none"> • Clearing of rural structures on unclassified land • Eucalyptus leaf cutting • Horticultural harvesting or pruning • Indigenous cultural practices • Minimal tree cutting • Noxious weed eradication • Pest control • Planted native vegetation • Private native forestry • Public utility Clearing • Regrowth removal • Stock fodder provision 	Any clearing of native vegetation not included in columns 1 or 3	<p>Except where included in column 1, clearing on any property in any one calendar year, of a total of more than 2 hectares of:</p> <p>(a) grassy white box woodland in good condition, or</p> <p>(b) grassy yellow box woodland in good condition, or</p> <p>(c) River Red Gum communities, in each case, as defined in the RHRVMP (see definitions in this Factsheet).</p> <p>Clearing of native vegetation within sites of threatened flora or ecological communities, being sites identified in recovery plans approved under Part 4 of the Threatened Species Conservation Act 1995.</p>