

Clearing Native Vegetation: A guide for landholders in the SEAVROC Shires

Beverley Brookton Cunderdin Quairading York

Do I need a clearing permit?

Before you think about filling out an application form for a clearing permit, you should check whether the clearing could be carried out under an exemption.

Clearing exemptions exist for everyday activities such as clearing along a fence line, fire hazard reduction, firewood, isolated trees and clearing around infrastructure.

Landholders clearing under an exemption are limited to clear up to 1 hectare only per financial year.

Exemptions do not apply in an 'Environmentally Sensitive Area' (ESA).

If you have already cleared 1 hectare this financial year you may have to

What if I clear without a permit?

The clearing of native vegetation in Western Australia without a permit is an offence under the *Environmental Protection Act 1986*.

Unlawful clearing from individuals can result in fines of up to \$250,000.

SEAVROC employs two Environmental Officers, based at the Shire of Quairading, who are able to assist landholders with native vegetation clearing enquiries.

If you need help with an application, are unsure about whether your clearing activity is exempt from the regulations or have any general enquiries, please contact us:

Jen Vincent
Environmental Project Officer
9645 0016 / 0447 898 995
gshireepo@westnet.com.au

Emma Wilson
Environment Officer
9645 0236 / 0427 450 236
gshireclc@westnet.com.au

Alternatively contact the Department of Environment and Conservation:
Native Vegetation Conservation Branch
9219 8744
www.dec.wa.gov.au/nvp

How do I apply for a clearing permit?

Applications for clearing permits are available on the DEC website www.dec.wa.gov.au/nvp.

It is recommended that you contact the SEAVROC Environmental Team or DEC for advice before you submit an application.

There are two types of clearing permits - an *Area Permit* and a *Purpose Permit*. In most private landholder cases, you will need to apply for an *Area Permit*.

Applications require detailed property information of the proposed clearing site including a map and fees do apply.

It may take a number of weeks for a decision to be made on your application, depending on the nature and scale of your proposed clearing.

Once received, your application will go through a number of steps before a decision is made whether to grant or refuse a clearing permit.

Your application will be assessed for impacts on a wide range of environmental issues including biodiversity, land degradation and water quality.

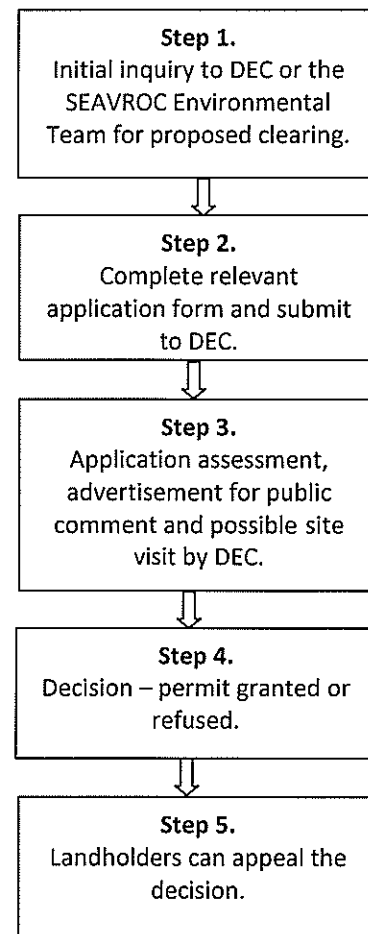
Can I clear along my fence line?

You are allowed to clear along a fence line up to 5 metres into your property in order to maintain or replace the fence.

If the other side of the fence is Crown Land (eg. a road reserve), you are allowed to clear up to 1.5 metres from the fence into this land. However, to do this, you must first obtain written approval from your Shire CEO.

This exemption does not apply in an ESA. You should note that clearing for fences, combined with other exempt clearing activities on your property, must not exceed 1 hectare in a financial year.

Clearing Permit Process



Glossary of Terms

Area Permits: are used when the applicant is the owner of the land or when the applicant is doing the clearing on behalf of the owner of the land and has written authority to do so. Area permits are for a defined area.

Clearing: Means causing substantial damage to native vegetation. This includes:

- the killing or removing of native vegetation;
- the severing or ringbarking of trunks or stems;
- the draining or flooding of the land;
- the burning of vegetation;
- the grazing of stock; or
- any other activity that kills or damages native vegetation.

Environmentally Sensitive Areas (ESA): There are a number of areas around Western Australia where the exemptions under regulations do not apply. These areas are referred to as environmentally sensitive areas. These locations are generally areas where the vegetation has high conservation value and cannot be cleared.

Section 51B of the EP Act allows the Minister to declare an ESA. Once declared, the exemptions under the regulations do not apply in these areas. This means that if you want to clear native vegetation in an ESA, you may need to apply for a clearing permit.

Landholder: The holder or proprietor of the land.

Native Vegetation: The definition includes all types of native vegetation, including those found in aquatic and marine environments. It includes all native grasses, shrubs and trees but does not include intentionally sown native vegetation. You should be aware, however, that there are some types of intentionally planted vegetation that are considered to be native vegetation, including vegetation that was sown, planted or propagated as required under the EP Act or another written law. Additionally, the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* also define some types of intentionally planted vegetation as native vegetation, including:

(a) Vegetation that was planted and funded (wholly or partly):

- by a person who was not the owner of the land and it was planted for the purpose of biodiversity conservation or land conservation; or

(b) Vegetation that has:

- a conservation covenant or agreement to reserve under the Soil and Land Conservation Act 1945;

- a covenant to conserve under the National Trust of Australia (WA) Act 1964;

- a restrictive covenant to conserve under the Transfer of Land Act 1983; or some other form of binding undertaking to establish and/ or maintain the vegetation.

Property: An area of land that is managed as a single property whether or not it is made up of a number of properties held under separate titles.

Purpose Permits: can be used when the applicant is not the owner of the land they wish to clear but have authority under a written law or permission to access the land to undertake clearing. Purpose permits are usually for clearing of different areas from time to time for a specified purpose.

Road Reserve: The road reserve includes the road and remnant vegetation up to an adjacent property's fence line.

SEAVROC: South East Avon Voluntary Regional Organisation of Councils (Shires of Beverley, Brookton, Cunderdin, Quairading and York)

Further Reading

A number of useful fact sheets and guidelines on native vegetation clearing legislation, biodiversity, management and protection are available at <http://www.dec.wa.gov.au>. For more detailed clearing guidelines please see *Native Vegetation Clearing Guidelines for SEAVROC Landholders* available at your Shire.

This document is provided for guidance only. It should not be relied upon to address every aspect of the relevant legislation.

Native Vegetation Clearing Guidelines for SEAVROC Councils

Beverley Brookton Cunderdin Quairading York

These Guidelines are designed to assist the SEAVROC Councils with native vegetation clearing legislation in Western Australia and the process for clearing applications.

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When does the Shire need a clearing permit?

Under the *Environmental Protection Act 1986* (EP Act), clearing of native vegetation will require a permit from the Department of Environment and Conservation (DEC) unless the clearing is for an exempt purpose. There are two types of exemptions – those in Schedule 6 of the EP Act for clearing under other laws, and those in regulation 5 of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004 (Clearing Regulations) for general everyday activities.

There are a number of exemptions contained within regulation 5 of the Clearing Regulations that apply to Local Government for general maintenance purposes, and these are detailed below. **If a valid exemption does not apply for the purpose of proposed clearing, a clearing permit is required.**

Environmentally sensitive areas and Declared Rare Flora

There are areas around Western Australia of environmental significance within which the exemptions in the Clearing Regulations do not apply. These areas are referred to as environmentally sensitive areas (ESAs), and are declared under section 51B of the EP Act. DEC has developed a 'Native Vegetation Map Viewer' available at www.dec.wa.gov.au/nvp in the 'data' tab to assist landholders and managers in determining the location of ESAs.

An area that would otherwise be an ESA does not include the maintenance area of a stretch of road or railway. The maintenance area of a stretch of road or railway means any area in the reserve for that stretch of road or railway that can be lawfully cleared.

It is an offence under the *Wildlife Conservation Act 1950* to disturb declared rare flora (DRF), regardless of whether the area is also an ESA under the EP Act. Markers are placed on roadsides to assist local government to protect DRF. The area within 50m of the DRF is an ESA. Current DRF maps developed by DEC are available from the SEAVROC Environmental Team.

Clearing and maintenance along roads and railway

Item 22 of regulation 5 (and schedule 2) of the Clearing Regulations provides an exemption for clearing for maintenance in existing transport corridors (being a stretch of road, whether public or private, or railway).

Local Government may clear native vegetation within the maintenance area of a road or railway for the purpose of a **crossover area**, a **lateral clearance area**, or a **sight line area**, provided that the clearing is to the extent previously cleared for that purpose, and that the previous clearing for that purpose occurred (lawfully) in that area within the 10 years immediately prior. This exemption also applies to clearing for the maintenance and protection of **transport corridor infrastructure**, provided that the clearing is to the extent necessary to maintain the efficacy and safety of the infrastructure, protect the infrastructure (e.g. from fire), and provide access to the infrastructure to maintain it. This exemption also applies to clearing for the maintenance of an area that is a **public roadside facility**, provided that the clearing is to the extent necessary to maintain (but not extend) the intended use of the area.

Any extension, widening, upgrading or realignment of road or railway infrastructure that requires the clearing of native vegetation is considered to be new works. New works are not covered under this exemption and will require a clearing permit.

A landholder has asked permission to clear along a fenceline into the road reserve

Item 11 of regulation 5 of the Clearing Regulations provides an exemption for clearing between private property and Crown land (e.g. a road reserve), provided that the clearing on the Crown land is no more than **1.5 metres from the fence**. This exemption applies to the owner of the land on which the clearing is to take place, therefore the approval of the owner of that Crown land (e.g. the Local Government in the case of a road reserve) must be obtained prior to undertaking the clearing. This exemption does not apply in ESAs.

It is suggested that when Shires receive a request from a landholder to clear along a fenceline, they first ascertain whether the area is in an ESA and whether there are any DRF in the vicinity of the area to be cleared. If the area is in an ESA or in the vicinity of DRF, the landholder will need to apply for a clearing permit.

Fire hazard reduction clearing

Item 3 of regulation 5 of the Clearing Regulations provides an exemption for clearing by burning for fire hazard reduction, provided that the burning occurs outside of the restricted periods declared under the *Bush Fires Act 1954* and that it is done in a way that minimises long term damage to environmental value of the vegetation. This exemption applies to the owner of the land on which the clearing is to take place. This exemption does not apply in environmentally sensitive areas. Whilst having regard to safety issues, care should be taken not to carry out hazard reduction burning so frequently that it will reduce or prevent ability of the vegetation to recover.

Clearing to maintain existing cleared areas around a building, fenceline, fire risk reduction area for a building, vehicle or walking track

Item 15 of regulation 5 of the Clearing Regulations provides an exemption for clearing to maintain existing cleared areas around infrastructure for the following purposes, provided that the land was lawfully cleared within the 10 years immediately prior and the clearing is to the extent previously lawfully cleared for that purpose: around a building or structure for the use of the building or structure; for a fire risk reduction area for a building; to maintain an area along a fence line to provide access to construct or maintain the fence; or to maintain a vehicle or walking track.

This exemption also applies to clearing of land that was previously lawfully cleared (possibly in excess of 10 years prior) for the following purposes, provided that the clearing does not exceed the extent specified for that purpose:

- around a building or structure for the use of the building or structure - maximum of 20 metres;
- for a fire risk reduction area for a building - maximum of 20 metres;
- to maintain an area along a fence line to provide access to construct or maintain the fence - maximum of 5 metres; or
- to maintain a vehicle or walking track - maximum of 5 metres.

This exemption applies to the owner or occupier of the land on which the clearing is to take place. This exemption does not apply in ESAs.

The Shire needs a clearing permit, how do we apply?

Fill out an application form (which can be downloaded from www.dec.wa.gov.au/nvp) and submit it to DEC. A permit from DEC authorising the clearing of native vegetation must be obtained prior to commencing clearing.

There are two types of clearing permits - an Area Permit and a Purpose Permit.

Area Permits – Local government should apply for an area permit if:

- they are the owner of the land, as defined in section 51A of the EP Act; and
- they intend to clear a single, defined area of land for a project that has a known end date.

Purpose Permit - Local government can apply for a purpose permit if there are a number of different clearing activities in different areas that may be undertaken over an extended period of time. For example, a local government might have a works program that has identified a number of different roads that need upgrading in different parts of the local government boundary, as well as identifying places where new roads need to be built.

Fill out the application form with as much detail as possible and follow all instructions. Supporting information will be required, for example, a detailed map of the area proposed to be cleared. There will be a fee payable to DEC for every application which ranges from \$50-\$200 depending on the size of the land to be cleared.

The application has been submitted to DEC, what next?

It may take a number of weeks for a decision to be made on a clearing permit application, depending on the nature and scale of your proposed clearing. Once received, an application will be assessed against the clearing principles in schedule 5 of the EP Act.

DEC is required to invite submissions on applications from interested parties. This can include local governments, other government agencies, community groups or others that may be impacted by a proposal to clear.

If a site visit is required, the DEC officer managing the application will contact the applicant to request a time to visit the property and discuss the application.

The Chief Executive Officer of DEC will decide to either grant a permit (which may or may not be subject to conditions) or refuse a permit. A Shire who disagrees with the decision may lodge an appeal within 28 days.

Complying with the clearing permit

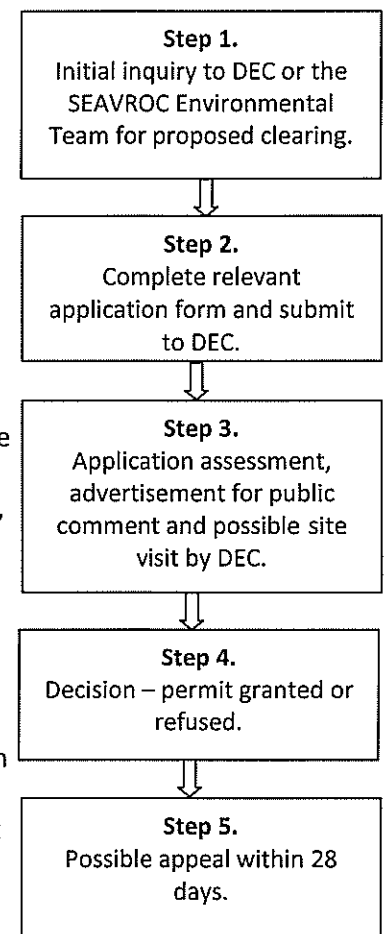
If permission to clear has been granted, the Shire will receive a clearing permit. As the holder of a clearing permit, the Shire is responsible for ensuring the requirements of the clearing permit are followed. Conditions may relate to **record keeping, reporting, revegetation** or other actions.

The Wheatbelt region as a whole retains only 7% of its native vegetated area on average. Because of this, more often than not, an offset condition will be placed on a clearing permit. Offsets are required where the clearing may be or is at variance to one or more of the principles that DEC uses in its assessment methodology. Offsets should directly counterbalance the loss of the native vegetation. If an offset condition is placed on the clearing permit, an offset proposal must be submitted to DEC for approval prior to clearing commencing. The SEAVROC Environmental Team can assist in developing offset proposals.

What if the Shire clears without a permit?

The clearing of native vegetation in Western Australia without a permit is an offence under the EP Act. Unlawful clearing from Local Government can result in fines of up to \$500,000.

Clearing Permit Process



Glossary of terms

Clearing: Section 51A of the EP Act defines clearing to mean the killing or destruction of, the removal of, the severing or ringbarking of trunks or stems of, or the doing of any other substantial damage to, some or all of the native vegetation in an area, and includes the draining or flooding of land, the burning of vegetation, the grazing of stock, or any other act or activity, that causes substantial damage to some or all of the native vegetation in an area.

Crossover area: Means the area occupied by a crossover from a road to a property adjacent to the road and any associated sight line areas.

Environmentally sensitive area: There are a number of areas around Western Australia of environmental significance within which the exemptions in the Clearing Regulations do not apply. These areas are referred to as environmentally sensitive areas (ESAs), and are declared under section 51B of the EP Act and described in the Environmental Protection (Environmentally Sensitive Areas) Notice 2005.

Landholder: The holder or proprietor of the land.

Lateral clearance area: In relation to a stretch of road or railway, means the area (if any) parallel to and immediately adjacent to the stretch of road or railway that is ordinarily cleared.

Native vegetation: Sections 3(1) and 51A of the EP Act define native vegetation as indigenous aquatic and terrestrial vegetation, including dead vegetation, and intentionally planted vegetation where established as a requirement of this or any other law or declared by regulation to be native vegetation. Regulation 4 of the Clearing Regulations further defines native vegetation to include intentionally planted vegetation established (wholly or partly) with funding by a third party for the purpose of biodiversity or land conservation, and intentionally planted vegetation protected by a covenant or other binding agreement to establish and/or maintain the vegetation, but does not include intentionally planted vegetation established as a plantation for commercial harvest.

Property: An area of land that is managed as a single property whether or not it is made up of a number of properties held under separate titles.

Public roadside facility: Includes a camping area, rest area, information bay, road train assembly area or parking area or a footpath or cycle track in the road reserve.

Maintenance area: An area of a road reserve of a stretch of road or railway that has been lawfully cleared.

Road reserve: The road reserve includes the road and remnant vegetation up to adjacent property fencelines.

SEAVROC: South East Avon Voluntary Regional Organisation of Councils (Shires of Beverley, Brookton, Cunderdin, Quairading and York)

Sight line area: Means an area between the edge of a stretch of road or railway and a line of sight necessary for the safe use of the stretch of road or railway.

Transport corridor infrastructure: In relation to a stretch of road or railway, includes barriers, signs, guideposts, drains, levies, embankments, gutters, bridges, overpasses and other similar structures or works.

Further reading

A number of useful fact sheets and guidelines on native vegetation clearing legislation, biodiversity, management and protection is available at www.dec.wa.gov.au/nvp.

References

Department of Environment and Conservation Western Australia, 2005, *A Guide to Clearing Permits Under the Environmental Protection Act 1986*, viewed 31/3/2010 www.dec.wa.gov.au/nvp

Department of environment and Conservation Western Australia, 2005, *A Guide for Local Government - Clearing Permits Under the Environmental Protection Act 1986*, viewed 31/3/2010 www.dec.wa.gov.au/nvp

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Native Vegetation Conservation Branch
Department of Environment and Conservation
Locked Bag 104
Bentley Delivery Centre WA 6983
Ph. (08) 9219 8744
www.dec.wa.gov.au/nvp

When Do I need a clearing permit?

Before you think about filling out an application form for a clearing permit, you should check whether the clearing could be carried out under an exemption. Under the *Environmental Protection Act 1986* (EP Act), clearing of native vegetation will require a permit from DEC unless the clearing is for an exempt purpose. An exemption is a clearing activity you can undertake without a clearing permit. Some exemptions are limited to a combined total of 1 hectare per property per financial year.

Note that exemptions within the Clearing Regulations do not apply within environmentally sensitive areas (ESAs) as described in the Environmental Protection (Environmentally Sensitive Areas) Notice 2005. DEC has an online 'Native Vegetation Map Viewer' at www.dec.wa.gov.au/nvp in the 'data' tab to assist landholders in determining the location of ESAs.

There are a number of exemptions from the requirement for a clearing permit that apply to landholders for everyday activities, please see below for the most common clearing situations. **If a valid exemption does not apply for the purpose of proposed clearing, a clearing permit is required.**

Common clearing situations

I want to clear along a fenceline on my property and/or on Crown land.

Item 10 of regulation 5 of the Clearing Regulations provides an exemption for clearing along a fence line of, or within, a property to the width necessary to provide access to construct or maintain a fence, provided that the clearing, combined with other limited exempt clearing on the property, does not exceed 1 hectare in the financial year in which the clearing takes place. This exemption applies to the owner of the property on which the clearing is to take place. This exemption does not apply in environmentally sensitive areas.

Item 11 of regulation 5 of the Clearing Regulations provides an exemption for clearing between private property and Crown land (e.g. a road reserve), provided that the clearing on the Crown land is no more than **1.5 metres from the fence**. This exemption applies to the owner of the land on which the clearing is to take

place, therefore the **written approval of the owner of that Crown land (e.g. the Local Government in the case of a road reserve) must be obtained prior to undertaking the clearing.** This exemption does not apply in environmentally sensitive areas.

I want to carry out fire hazard reduction burning on my property

Item 3 of regulation 5 of the Clearing Regulations provides an exemption for clearing by burning for fire hazard reduction, provided that the burning occurs outside of the restricted periods declared under the *Bush Fires Act 1954* and that it is done in a way that minimises long term damage to environmental value of the vegetation. This exemption applies to the owner of the land on which the clearing is to take place. This exemption does not apply in environmentally sensitive areas. Whilst having regard to safety issues, care should be taken not to carry out hazard reduction burning so frequently that it will reduce or prevent ability of the vegetation to recover.

I want to clear for firewood

Item 5 of regulation 5 of the Clearing Regulations provides an exemption for clearing to provide firewood for use by the owner or occupier of the property for domestic heating or cooking, provided that the clearing does not kill any live vegetation or prevent regrowth of the vegetation, that the clearing is carried out to provide firewood to the extent to which it could not be obtained from vegetation already cleared for another purpose, and that the clearing, combined with other limited exempt clearing on the property, does not exceed 1 hectare in the financial year in which the clearing takes place. This exemption applies to the owner or occupier of the land on which the clearing is to take place. This exemption does not apply in environmentally sensitive areas. The firewood must not be sold.

I want to clear to maintain existing cleared areas around a building, fenceline, fire risk reduction area for a building, vehicle or walking track.

Item 15 of regulation 5 of the Clearing Regulations provides an exemption for clearing to maintain existing cleared areas around infrastructure for the following purposes, provided that the land was lawfully cleared within the 10 years immediately prior and the clearing is to the extent previously lawfully cleared for that purpose; around a building or structure for the use of the building or structure; for a fire risk reduction area for a building; to maintain an area along a fence line to provide access to construct or maintain the fence; or to maintain a vehicle or walking track.

This exemption also applies to clearing of land that was previously lawfully cleared (possibly in excess of 10 years prior) for the following purposes, provided that the clearing does not exceed the extent specified for that purpose:

- around a building or structure for the use of the building or structure - maximum of 20 metres;
- for a fire risk reduction area for a building - maximum of 20 metres;
- to maintain an area along a fence line to provide access to construct or maintain the fence – maximum of 5 metres; or
- to maintain a vehicle or walking track – maximum of 5 metres.

This exemption applies to the owner or occupier of the land on which the clearing is to take place. This exemption does not apply in environmentally sensitive areas.

I want to clear an isolated tree on my property

Item 19 of regulation 5 of the Clearing Regulations provides an exemption for clearing an isolated tree on a property, provided that the tree is more than fifty metres from any other native vegetation, and that the clearing, combined with other limited exempt clearing on the property, does not exceed 1 hectare in the financial year in which the clearing takes place. This exemption applies to the owner of the property on which the tree is located. This exemption does not apply in environmentally sensitive areas.

I need a clearing permit, how do I apply?

You need to fill out an application form (which can be downloaded from www.dec.wa.gov.au/nvp) and submit it to DEC. A permit from DEC authorising the clearing of native vegetation must be obtained prior to commencing clearing.

There are two types of clearing permits - an Area Permit and a Purpose Permit. In most private landholder cases, you will need to apply for an Area Permit.

Area Permits – are used when the applicant is the owner of the land or when the applicant is doing the clearing on behalf of the owner of the land and has written authority to do so. Area permits are for a defined area.

Purpose Permits – can be used when the applicant is not the owner of the land they wish to clear but have authority under a written law or permission to access the land to undertake clearing. Purpose permits are usually for clearing of different areas from time to time for a specified purpose.

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I have submitted my clearing permit to DEC, what next?

It may take a number of weeks for a decision to be made on your clearing permit application, depending on the nature and scale of your proposed clearing. Once received, your application will be assessed against the clearing principles in schedule 5 of the EP Act and DEC's Chief Executive Officer will take into consideration any relevant planning and other matters prior to making a decision to grant or refuse a clearing permit

DEC is required to invite submissions on your application from interested parties. This can include local governments, other government agencies, community groups or others that may be impacted by a proposal to clear

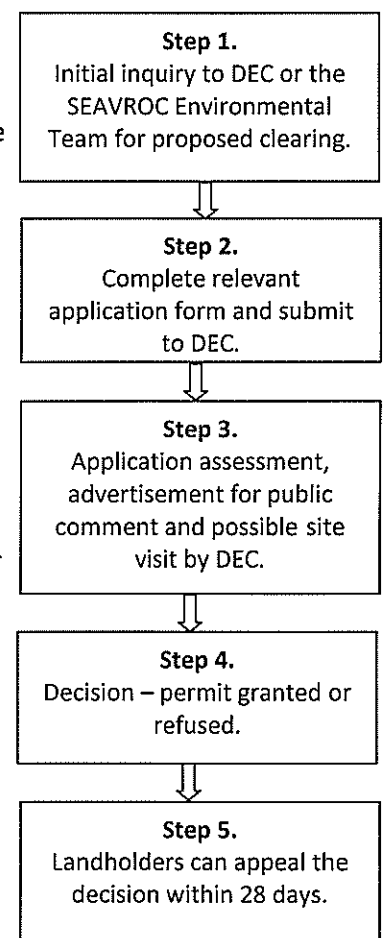
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Road reserve: The road reserve includes the road and remnant vegetation up to adjacent property fencelines.

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