



Factsheet updated June 2020

Voluntary Conservation on Private Land

Part 3: Voluntary Declarations

These Fact Sheets are a guide only and are no substitute for legal advice. To request free initial legal advice on an environmental or planning law issue, please visit edo.org.au

Overview

This fact sheet is Part 3 of a 4-part series of fact sheets on voluntary conservation on private land. It outlines general information on making a voluntary declaration under the *Vegetation Management Act 1999* (“VMA”). Voluntary declarations legally secure vegetation on by identifying category A vegetation on a property map of assessable vegetation (“PMAV”), providing protections over the declared area.

What is a voluntary declaration?

Voluntary declarations are a mechanism available under the VMA for protecting areas of native vegetation on privately owned land that have either a high land conservation value or are vulnerable to land degradation.¹ They are administered by the Queensland Department of Natural Resources, Mining, and Energy (“DNRME”).

The VMA has always contained a process for the Minister or Governor in Council to make a declaration over an area to protect high nature conservation values and areas vulnerable to land degradation. However, a voluntary declaration is a separate mechanism which is declared by the chief executive and subject to different processes. The voluntary declaration process is provided for in sections 19E to 19L of the VMA under subdivision 2—Declarations by chief executive. The Voluntary declaration process provides a simplified and streamlined procedure for landholders seeking to voluntarily protect native vegetation on their land. It also enhances the vegetation management framework by providing a voluntary protection mechanism that integrates with and helps deliver other components of the VMA. This streamlined protection process makes it easier and more cost effective for landholders to protect native vegetation for a range of purposes, such as:

- participating in conservation incentive programs
- providing legal security for offset areas required under the *Environmental Offset Act 2014* (the Offsets Act) exchange area required under the VMA
- rehabilitating areas subject to land degradation
- addressing Federal offset requirements under the Australian Government’s *Carbon Credits (Carbon Farming Initiative) Act 2011* or *Environment Protection and Biodiversity Conservation Act 1999* (“EPBC”)
- other conservation purposes.²

A voluntary declaration protects vegetation from broadscale land clearing by legally securing the area through a voluntary declaration and associated Category A PMAV. Category A areas generally require a person to apply for a permit in order to carry out any land clearing,³ unless the clearing is exempted by an enforcement notice under the *Planning Act 2016* or a restoration notice.

A voluntary declaration also involves the preparation of a management plan to either protect the conservation values of the area or prevent further land degradation. This management plan will outline the management intent and proposed conservation outcomes of the declared area. It can state the activities intended to be carried out, as well as any restrictions.

For example, the management plan may require restoration activities to be carried out, and restrict clearing which might otherwise have been allowed as well as activities such as grazing.

However, under Schedule 21 of the Planning Regulations 2017 some clearing may still take place within a declared area for the following reasons:

- weed control;
- public safety;
- fodder harvesting;
- managing thickened vegetation;
- clearing for encroachment;
- necessary environmental clearing; and
- clearing to establish a necessary fence, firebreak, road or vehicle track where it cannot be reasonably avoided or minimised.

Some of the information in this factsheet has been taken from the DNRME publication “Guide to voluntary declarations under the *Vegetation Management Act 1999*”.⁴ This guide is available from DNRME website [here](#).

How does the VMA work and where do voluntary declarations fit in?

The VMA regulates vegetation clearing in Queensland using a system of regional ecosystem maps and PMAV’s. Regional ecosystem maps apply to larger regions across Queensland, while PMAV’s map the vegetation on individual properties. These maps categorise the vegetation and apply a corresponding level of protection under the VMA.

There are 5 categories vegetation may be given under the VMA:

1. **Category A:** An area that is either a declared area, an offset area or an exchange area. This category also covers land that has been unlawfully cleared,

subject to a restoration notice or enforcement notice or has been cleared of native vegetation and has an element of a clearing offence.⁵

2. **Category B:** An area that either contains remnant vegetation or an area of the discretion of the chief executive. Category B also covers an area that is a Land Act tenure and has a specific regional ecosystem.⁶
3. **Category C:** An area that contains high value regrowth vegetation or the chief executive decides to show on the regulated vegetation management map as a Category C.⁷
4. **Category R:** An area that is a regrowth watercourse and drainage feature area.⁸
5. **Category X:** An area that does not fit within A, B, C or R or the chief executive decides is a Category X.⁹

Each of these categories gives specific levels of protection to vegetation. The exact level of protection given for each category in an area will be defined by the vegetation management framework which includes management plans, clearing codes, development approval conditions and exemptions.

To clear regulated vegetation a development approval under the *Planning Act* may be required. The application for this development approval will be taken to be for “assessable development” under the Act and will be assessed against the declared area’s vegetation management plan, as well as any applicable vegetation clearing codes.

In general, it will be harder to get a permit to clear an area of Category A vegetation than it will be for the other categories. Category A vegetation is protected from most land clearing and is usually only allowed where the clearing is in accordance with the voluntary declaration management plan, or for the exempt clearing purposes of the *Planning Act*.

What vegetation can a voluntary declaration protect?

A voluntary declaration can be used to protect:

1. areas of native vegetation with a high land conservation value; or
2. areas which are vulnerable to land degradation.

The VMA defines an area of high conservation value as having at least one of the following characteristics:

- a wildlife refugium – an area where a species or a group of species has retreated due to a threatening process
- a centre of endemism – an area containing concentrations of species that are largely restricted to the area
- an area containing a vegetation clump or corridor that contributes to the maintenance of biodiversity
- an area that makes a significant contribution to the conservation of biodiversity
- an area that contributes to the conservation value of a wetland, lake or spring
- another area that contributes to the conservation of the environment.¹⁰

An area which is vulnerable to land degradation must be subject to one of the following:

- soil erosion

- rising water tables
- the expression of salinity, whether inside or outside the area
- mass movement by gravity of soil or rock
- stream bank instability
- a process that results in declining water quality.¹¹

How does a landowner apply for a voluntary declaration?

To make a voluntary declaration, the landowner must first contact DNRME and request a voluntary declaration. This form is available [here](#) and it is recommended that a landowner interested in making a declaration should contact them to discuss their individual application.

The completed form must include:

- written consent to the making of the declared area from all owners of the land
- a record of all registered interest holders over the declared area
- purpose of the voluntary declaration
- an explanation of why the area is either an area of high conservation value or an area vulnerable to land degradation, and which criteria the declaration is proposed to be made under (see above under heading 3 “*What vegetation can a voluntary declaration protect?*”)
- a proposed management plan signed by the proponent.¹²
- Evidence that the responsible agency has endorsed the offset delivery plan for the offset area (where applicable i.e. where the voluntary declaration is used to secure an environmental offset)
- Any other details outlined in the form. ¹³

How does a landowner prepare a management plan?

The purpose of the management plan supporting the proposed declaration is to deliver information that demonstrates how the area will be managed to conserve and improve its high nature conservation value or to repair and restore degraded land and prevent further land degradation. The level or detail will be dependant on the purpose of the declaration and the area being secured.

At a minimum the management plan must:

- be signed by the proponent; and
- include sufficient information to allow DNRME to map the boundary of the stated area; and
- state the proponent’s management intent and proposed outcomes for the conservation of the high nature conservation value of the area or the prevention of land degradation in the area; and
- state the activities that the proponent intends to carry out, or refrain from carrying out, to achieve the management outcomes for the conservation of the high nature conservation value of the area or the prevention of land degradation in the area; and
- state the restrictions, if any, to be imposed on the use of, or access to, the area by other persons to achieve the management outcomes for the conservation of the high nature conservation value of the area or the prevention of land degradation in the area.¹⁴

As a general rule, the management plan should contain as much information as possible.

How does a landowner prepare a map for the voluntary declaration?

The request for a voluntary declaration must also be accompanied by a map containing enough information to prepare a Category A PMAV of the declared area. The map must clearly identify the

proposed declared area. An accurate map allows DNRME to process the request more efficiently without having to ask for further information. Key factors in choosing a map are scale and size. Scales may vary from 1:1 000 (large scale) for a 25 ha property to 1:50 000 (small scale) for a 60 000 ha property. It is best to choose a scale that provides the detail you need with a map size that is easy to handle.

The maps need to be in a scalable format, showing clearly and accurately the proposed declared area and its relationship with the boundary of the property in which the proposed declared area occurs.¹⁵

The DNRME also encourages landholders to provide further information that will help to assess the request. This can include:

- Reference points with a Map Grid of Australia 1994 (“MGA94”)¹⁶ coordinate and zone reference for each point acquired by a Global Positioning System (“GPS”) or similar system of satellites. These reference points should be taken at regular intervals to define the boundary of a particular area as well as at corners, or changes in direction, and also of the external property boundary.
- existing and proposed infrastructure
- all regional ecosystems mapped out in the proposed declared area
- drainage lines
- topography
- soil types
- areas of weed infestation
- areas with land degradation
- any other useful information.¹⁷

There is no minimum area which the voluntary declaration must cover.

How does DNRME assess the application for a voluntary declaration?

DNRME will assess the request for a voluntary declaration. If they are satisfied with it, they will send an offer to the landowner, which will include *drafts* of the following:

- declaration notice;
- declared area code (if proposed);
- PMAV showing the Category A area; and
- Declared area management plan, including a map of the declared area.¹⁸

The landowner can then accept the offer or reject it with reasons. If rejected, DNRME will consider the reasons and *may* make a new offer. If the landowner accepts the offer, DNRME will make the declaration and prepare the final PMAV (property map of assessable vegetation). The declaration and management plan will then be registered on the land title by DNRME and so will continue to apply even if the property is later sold to a new landowner.¹⁹

What effect does a voluntary declaration have?

A voluntary declaration will place a PMAV over the declared area and implement a vegetation management plan for the declared area.

The PMAV defines the area covered by the voluntary declaration, and that area will be classed as a “Category A” area under the VMA. Clearing in Category A areas is allowed if it is consistent with the

management plan or fall within the exemptions above. Any other clearing in the declared area will require a development approval.

A development application requiring clearing of Category A vegetation will be assessed under State Development Assessment Provisions, which will be dependent on the purpose of the declared area. Generally, clearing must be consistent with vegetation management requirements unless a better environmental outcome can be achieved.²⁰ If a landowner clears vegetation on their land without a development approval then they may be prosecuted for committing an offence against the *Planning Act*.

Applications for development approvals will be assessed against the relevant vegetation clearing codes and the management plan and may only be issued for vegetation clearing in a voluntary declaration area if the clearing is for one of the following relevant purposes:

- a project declared to be a coordinated project under the *State Development and Public Works Organisation Act 1971*
- necessary to control non-native plants or declared pests
- to ensure public safety
- for relevant infrastructure activities and the clearing can not reasonably be avoided or minimised
- a natural and ordinary consequence of other assessable development for which a development approval was given under the repealed *Integrated Planning Act 1997*, or a development application was made under that Act, before 16 May 2003
- for fodder harvesting
- for thinning
- for necessary environmental clearing
- for an extractive industry
- for clearing of an encroachment.²¹

The management plan may also prohibit permits being granted for certain uses which may otherwise have been allowed under the VMA.

How can a voluntary declaration be amended?

The voluntary declaration can be amended via the management plan. The chief executive may, with the agreement of the owner of the land subject of the management plan, amend the plan.²² DNRME have advised that this option will generally be used to keep the management plan up to date and respond to previously unforeseen circumstances. It is not intended to be used to reduce the effectiveness of the management plan in providing conservation outcomes.²³

When will a voluntary declaration end?

The voluntary declaration will end when the Chief Executive of DNRME declares it to end in one of the following circumstances:

1. The declaration is not in the interests of the State, having regard to the public interest.²⁴
2. The management outcomes of the management plan have been achieved.²⁵

What are the advantages of a voluntary declaration?

Voluntary declarations can be used to protect areas of high nature conservation values or areas vulnerable to land degradation. A voluntary declaration can also be used to secure areas of land to satisfy statutory offset requirements and to secure exchange areas under the VMA and other legislation.

What are the disadvantages of a voluntary declaration?

Securing land as Category A vegetation may afford it some protection, however, there are varying exceptions that allow clearing the land, and the protection is often through a state code system which gives applicants and decision makers a wide discretion to determine if a development conforms with the code. Further, evidence of existing or significantly recovered vegetation is required to meet category requirements, making voluntary declarations unsuitable for early stage rehabilitation.

In general, a voluntary declaration may be an attractive option for landowners who are looking for a mechanism without the expense or onerous application process of other mechanisms (particularly, statutory covenants, nature refuges and coordinated conservation areas). They will not offer the same level of protection as a nature refuge or special wildlife reserve, but are far easier and quicker to obtain. Voluntary declarations attempt to strike a balance between protecting an area, while being accessible and still leaving room for some land uses.

¹ VMA Part 2, Division 4.

² *Guide to Voluntary Declarations under the Vegetation Management Act 1999*. Effective 21 June 2019.

³ Exemptions exist under Schedule 21 of the *Planning Regulations 2017*.

⁴ *Guide to Voluntary Declarations under the Vegetation Management Act 1999*. Effective 21 June 2019.

⁵ VMA s 20AL.

⁶ VMA s 20AM.

⁷ VMA s 20AN.

⁸ VMA s 20ANA.

⁹ VMA s 20AO.

¹⁰ VMA s 19G(1)(b).

¹¹ VMA s 19G(2)(b).

¹² VMA s 19E.

¹³ *Guide to Voluntary Declarations under the Vegetation Management Act 1999*. Effective 21 June 2019.

¹⁴ VMA s 19E (3).

¹⁵ *Guide to voluntary declarations under the Vegetation Management Act 1999*, p 12.

¹⁶ Expected to change to Geocentric Datum of Australia 2020 (GDA2020) from June 2020.

¹⁷ *Guide to voluntary declarations under the Vegetation Management Act 1999*, p 13.

¹⁸ *Guide to voluntary declarations under the Vegetation Management Act 1999*, p 16.

¹⁹ VMA s 19K (6).

²⁰ State Development Assessment Provisions V2.5, Table 16.2.2 PO3.

²¹ VMA s 22A (2).

²² VMA s 19I.

²³ *Guide to voluntary declarations under the Vegetation Management Act 1999*, p 19.

²⁴ VMA s 19L (1)(a).

²⁵ VMA s 19L (1)(b).