



Murrumbidgee  
Irrigation

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## **Development Rules**

**Effective: 1 July 2018 to 30 June 2019**

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## 1. Introduction

- 1.1 This document contains Rules of the Company that are binding under the Water Entitlements Contract and the Water Delivery Contract (the **Contract**). A Customer's Contract binds them to these Development Rules.
- 1.2 These Development Rules should be read in conjunction with, and are subject to:
- (1) the Contract;
  - (2) any relevant Rules;
  - (3) the Commonwealth Act;
  - (4) the Commonwealth Rules;
  - (5) the NSW Act; and
  - (6) all other relevant laws, regulations, orders and Licences.

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## 2. Definitions and interpretation

- 2.1 In these Rules, the following words have these meanings unless the contrary intention appears:
- (1) **Channel** means a conduit in or on the land intended for the carriage of water and includes both supply channels and drainage channels.
  - (2) **Channel Bank** means the retaining wall of a channel.
  - (3) **Commonwealth Act** means the *Water Act 2007* (Cth);
  - (4) **Commonwealth Rules** means *Water Market Rules 2009* (Cth), the *Water Charge (Termination Fees) Rules 2009* (Cth) and the *Water Charge (Infrastructure) Rules 2010* (Cth).
  - (5) **Company Works** means works owned by the Company, including but not limited to any permanent or temporary structure constructed to facilitate the operation of the works. Typical works of the Company include:
    - (a) earthen channels (both supply and drainage);
    - (b) access culverts;
    - (c) outlets and regulators;
    - (d) flumes/subways;
    - (e) stock and domestic piped supplies;
    - (f) pipe off-takes;
    - (g) under boring;
    - (h) flood control structures (including pumps and levees);
    - (i) drainage pump sites;

- (j) pump stations;
  - (k) pipes; and
  - (l) IHS systems.
- (6) **Crest Width** means the horizontal width of the top of a Channel Bank as demonstrated in Diagram 1 in Annexure A.
- (7) **Deep Bore** means a hole in the ground designed to provide access to subsurface water at a depth below the natural surface of greater than 12 metres.
- (8) **Irrigation Practices** means, in relation to a Landholding:
- (a) the Works on or connected to the Landholding; and
  - (b) the manner in which those Works are employed for the purposes of the irrigation activities carried out on the Landholding from time to time;
- (9) **Landholding** has the same meaning as that given in the Contract;
- (10) **Pests** has the same meaning as that provided by section 15 of the *Biosecurity Act 2015* (NSW);
- (11) **Shallow Bore** means a hole in the ground designed to provide access to subsurface water from below the natural surface level to a depth of 12 metres;
- (12) **Toe of the Bank** means, where it refers to a Channel Bank, the point furthest away from the channel, of the Channel Bank where the batter meets natural ground level as demonstrated Diagram 1 in Annexure A;
- (13) **Top of Bank** means the upper most point of a Channel Bank as demonstrated in Diagram 1 in Annexure A.
- 2.2 A term defined in the Contract has the same meaning in these Development Rules, unless the contrary intention appears.
- 2.3 Clause 1.2 (Interpretation) of the Contract applies to these Development Rules with the necessary changes.

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### 3. Access to Company Works

- 3.1 Pursuant to the Act, the Company is entitled to unrestricted access through Landholdings whenever required for the purpose of installing, operating, repairing, replacing, maintaining, removing, extending, expanding, connecting, disconnecting, improving or doing any other thing that the Company considers necessary or appropriate to any of its water management works or to construct new water management works.
- 3.2 Where appropriate and subject to any Legal Requirement stating otherwise, the Company will provide improved access along channels to obtain a minimum 5 metres Top of Bank Crest Width of the Channel Bank. However, and for the avoidance of doubt:
- (1) this does not entitle the Customer to an easement over the Company's Works; and
  - (2) there is no guarantee or commitment by the Company to make access available across any Channel Bank in the Company's area of operations.

- 3.3 Subject to sub-rule 3.4, the Company will bear the cost associated with the construction of new access banks and the modification of existing Company Works if the Company determines that it is appropriate to do so.
- 3.4 Nothing in this rule 3 is intended to supersede the Customer's liability under clause 26 of the Water Delivery Contract for any damage done to the Company's Works.

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#### **4. Construction and planting near boundary of Company Works**

- 4.1 Subject to sub-rules 4.2 and 4.3, the Customer must not, without the prior written consent of the Company, undertake any construction work, construct anything, erect a fence, plant any trees, vegetation or crops, stockpile vegetation, stockpile chemical drums or other materials, or allow any of those things to remain:
- (1) in relation to a Channel forming part of the Company's Works, within 10 meters of the Toe of the Bank; or
  - (2) otherwise, within 5 metres of the Company's Works.
- 4.2 The Customer must not construct or permit to remain on any Landholding:
- (1) any Shallow Bore within 40 metres of the Company's Works; or
  - (2) any Deep Bore within 20 metres of the Company's Works,
- without the prior written consent of the Company.
- 4.3 Despite sub-rules 4.1 and 4.2, the Company may, from time to time, determine the minimum distance required between any construction work on a Landholding and:
- (1) the boundary between the Company's Works and a Landholding;
  - (2) in relation to a channel forming part of the Company's Works, the Toe of the Bank; or
  - (3) generally, the Company's Works,
- and such determinations bind the Customer.
- 4.4 The Company may remove, or require the Customer to remove a private structure (including trees) installed prior to the adoption of the Development Rules that the Company determines is inconsistent with the objectives of this rule 4.
- 4.5 A Customer who does not comply with any one or more of sub-rules 4.1 to 4.4 of these Development Rules will be deemed to have committed a material breach under clause 26 of the Contract. In addition to its rights under the Contract, the Company may:
- (1) rectify the default and charge the Customer for the Costs incurred for rectifying the default and for any Loss suffered; and
  - (2) suspend water supply to the Customer.
- 4.6 The Company may, acting reasonably or in accordance with a Legal Requirement, remove any structure or carry out any remedial work required in consequence of a breach by a Customer of these Development Rules without first serving notice of the breach to the Customer.
- 4.7 The Company must not, in exercising its rights under this rule 4, take such action unless that action is reasonably necessary to:

- (1) prevent or remediate any damage, destruction or interference to the Company's Works;  
or
- (2) to ensure the Company, its employees, agents and servants have unimpeded access to the Company's Works.

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## **5. Change of on-farm practices**

- 5.1 A Customer who makes a change to their on-farm land use practice is responsible for ensuring that:
- (1) any change, addition, or cessation in on-farm land use practice will comply with all Documents, particularly these Development Rules and the Drainage Use Rules; and
  - (2) they have sufficient Rights of Access to operate their Irrigation Practice resulting from the change to their on-farm land use practice.

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## **6. Pests**

- 6.1 The Customer must control Pests on the Landholding in accordance the *Biosecurity Act 2015* (NSW) and:
- (1) provide any information reasonably requested by the Company with respect to the Customer's weed control activities; and
  - (2) not do anything which is reasonably likely to pollute the Company Works.
- 6.2 The Customer acknowledges that he, she or it is not permitted to apply any pesticides, herbicides or control sprays to the flow area of the Company Works, unless the Company states otherwise.
- 6.3 If the Customer fails to control Pests and it would be detrimental to the Company's Works or other Customers not to do so within a reasonable time (and in any event, within 30 days) after receiving a notice from the Company, the Company or the Company's Personnel may undertake work to control the relevant Pests.
- 6.4 All Costs reasonably incurred by the Company in carrying out work to control the relevant Pests under sub-rule 6.3 will constitute a debt due from the Customer to the Company that must be paid by the Customer to the Company on demand.

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## **7. Fencing**

- 7.1 Pursuant to the *Dividing Fences Act 1991* (NSW), the Company is not liable to contribute to the erection or maintenance of fencing infrastructure adjacent to the Company Works where the fencing is to be situated, or is situated on land not owned by the Company.
- 7.2 Where the Company owns the land, or has an easement on the land where the Company's Works are situated then, if the Company decides that it is reasonably necessary to erect a fence for the protection, maintenance or operation of the Company's Works, the Company may erect such a fence dividing the Landholding from the Company's Works without the consent of the Customer.
- 7.3 Subject to sub-rule 7.4, the cost of any fence erected under sub-rule 7.2 will be the responsibility of the Company.

- 7.4 A Customer will be liable for the Costs incurred by the Company for erecting or repairing a fence if:
- (1) the Customer had caused the damage to the existing fence that requires repair; or
  - (2) the erection of the fence was in response to a Customer's breach of any one or more of clauses 19, 20 or 24 of the Contract.
- 7.5 Where a Customer intends to erect a fence adjacent to Company Works on his, her or its Landholding, then the Customer is responsible for ensuring that:
- (1) the fence is constructed in accordance with rule 4.1 of these Development Rules; and
  - (2) the Customer has received a survey from a registered surveyor that the fence is located on his, her or its Landholding (and not on land owned by the Company or which the Company has an easement over).
- 7.6 Subject to sub-rule 7.7, where the Company causes damage to the Customer's fencing, including where it does so to gain access to Company's Works, it shall if practicable:
- (1) restore the fencing to its pre-damaged condition at no cost to the Customer; or
  - (2) if the Company determines that it is more appropriate to do so, pay to the Customer an amount equal to the pre-damaged value of the fencing.
- 7.7 The Company is not liable to restore a Customer's fence or provide compensation to the Customer under sub-rule 7.6 where the Customer's fence is in breach of sub-rule 7.5 of these Development Rules.

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## **8. Works by Third Party**

- 8.1 Where a person seeks any permission or consent from a Customer for the purpose of the carrying out construction, maintenance or repairs on a Landholding, to the maximum extent permitted by law, the Customer must not give consent if the construction would contravene these Development Rules if the construction were carried out by the Customer.
- 8.2 Where a person seeks a permission or consent under rule 8.1 or gives notice to a Customer of an intention to carry out any construction, maintenance or repairs on a Landholding, the Customer must promptly give notice to the Company and promptly provide a copy of any relevant notice given to the Customer by the person.

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## **9. Land or Environment Contamination**

- 9.1 The Customer must not place or permit to remain on the Landholding anything, including chemicals, hazardous materials, trash, rubbish or dead livestock, if it will:
- (1) breach, or be likely to breach, any Licences held by the Company;
  - (2) contravene the Company's obligations under a Legal Requirement; or
  - (3) contaminate the Landholding, the Company Works or land owned by the Company.
- 9.2 Where a Customer has received a written notice from the Company for a breach of rule 9.1 and fails to rectify that breach within 28 days after the date of that notice, then the Company will be entitled to remove the material from the Landholding at the Customer's expense.

- 9.3 The Company's rights under rule 9.2 are in addition to its rights under clause 26 of the Customer's Water Delivery Contract or clause 16 of the Customer's Water Entitlements Contract.

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## **10. Removal of Vegetation**

- 10.1 The Company may remove or trim any vegetation or tree on a Customer's Landholding that is, or is likely to cause damage, destruction or interference with Company Works, or where it determines that such removal or trimming is necessary to allow the Company access to the Company's Works.
- 10.2 The consent of the Customer is not required under sub-rule 10.1 but the Company must act reasonably when taking any such action under that sub-rule.
- 10.3 The Company shall, wherever reasonably possible, notify the Customer prior to the removal of any vegetation proposed to be removed from the Landholding but this is not a condition precedent for the removal or trimming to occur.
- 10.4 Subject to sub-rule 10.5, the Company will pay the Costs associated with the disposal of any vegetation or trees under this rule and, within a reasonable time after removal, reinstate any adversely affected area of the Landholding to a reasonable condition, subject to fair wear and tear.
- 10.5 The Customer will be liable for the Costs associated with the disposal of any trees where the Customer has breached rule 4 of these Development Rules.

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## **11. Removal of Material from Company Works**

- 11.1 A Customer must not (unless required to take action under rule 9 of these Development Rules) remove, construct or dig any fill or other materials from any part of any supply or drainage Channel owned or controlled by the Company.

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## **12. Consultation**

- 12.1 Where practical and except as otherwise specified in these Development Rules, the Company will consult with the Customer before implementing any rule that may have a significant adverse impact on the Customer's Landholding.

## ANNEXURE A

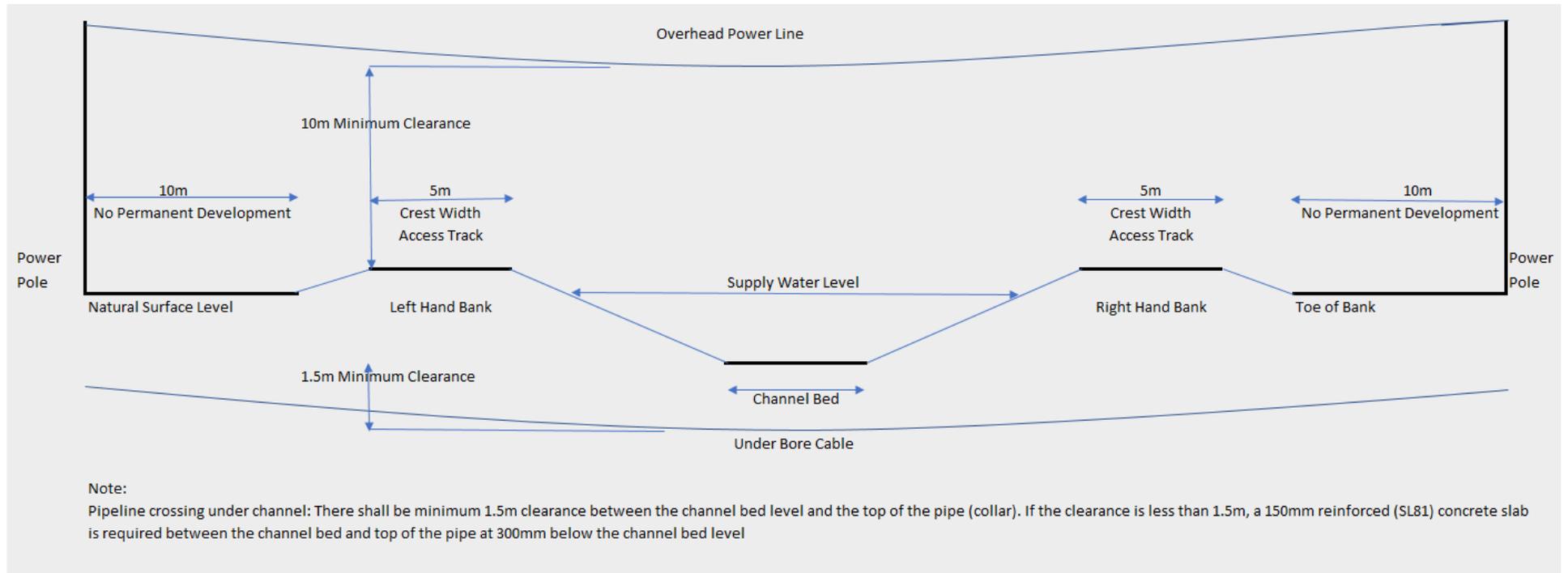


Diagram 1- This illustration is provided as a guide for Crest Width, Toe of the Bank and Top of the Bank