

# Remediation Order



Office of  
Environment  
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## ORDER ISSUED TO:

[Redacted]

|                   |               |
|-------------------|---------------|
| Notice Reference: | DOC18/56375   |
| Case Reference:   | 07049-2016    |
| Date Issued:      | 02 April 2019 |

BY: Registered Post (cc by email to [Redacted])

## ORDER TO CARRY OUT REMEDIATION WORK UNDER SECTION 11.15 OF THE BIODIVERSITY CONSERVATION ACT 2016 (NSW)

### BACKGROUND

- A. The Office of Environment and Heritage (OEH) has responsibility for the enforcement of the now repealed *Native Vegetation Act 2003 (NV Act)* and Parts 7-9 of the *National Parks and Wildlife Act 1974 (NPW Act)*.
- B. The NV Act and Parts 7-9 of the NPW Act were repealed on 25 August 2017. However, pursuant to clause 58 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017 (BC (S&T) Regulation)*, the repeal of this legislation does not affect any offence against those Acts, or the regulations under those Acts, that was committed before the repeal. Under the provisions of the BC (S&T) Regulation; parts of the Acts relating to proceedings for an offence, issuing of penalty notices for an offence, and the making of a court order in relation to an offence, continue to apply.
- C. Pursuant to clauses 53 and 54 of the BC (S&T) Regulation, remediation orders under Division 4 of Part 11 of the *Biodiversity Conservation Act 2016 (BC Act)* may be issued in relation to damage as a result of the commission of an offence under Parts 7-9 of the NPW Act or under the NV Act, if the offence was committed before 25 August 2017.
- D. Pursuant to section 11.15 of the BC Act, if the Chief Executive of OEH or delegate is satisfied that damage has occurred in or as a result of the commission of an offence against Parts 7-9 of the NPW Act or the NV Act, the Chief Executive or delegate may order a person to carry out specified remediation work in a specified manner and within a specified time.
- E. Senior Team Leaders, Compliance and Regulation, Conservation and Regional Delivery hold delegated authority on behalf of the Chief Executive of OEH for the purposes of section 11.15 of the BC Act.
- F. [Redacted] holds the position of Senior Team Leader, Compliance and Regulation - North West, Conservation and Regional Delivery, within OEH.
- G. [Redacted] as joint tenants are current owners, lawful occupiers with lawful control of [Redacted] and [Redacted] at [Redacted] – (the property).

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## BASIS FOR ISSUING REMEDIATION ORDER

- H. OEH has investigated a report of native vegetation clearing on 'the property' between 1 January 2014 and 5 July 2017.
- I. Under the NV Act, it was an offence pursuant to section 12 that native vegetation be cleared; except in accordance with development consent granted in accordance with the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, or a property vegetation plan issued under the NV Act.
- J. Information and evidence obtained to date; including site inspections, sampling of native vegetation, examination of satellite images and aerial photographs, indicates clearing of approximately 1,020 hectares of remnant native vegetation contrary to section 12 of the NV Act has occurred.
- K. Aerial photographs and satellite images indicate the vegetation communities removed had been continuously present since December 1984 and are therefore not regrowth as defined by the NV Act. These communities would have supported regenerating tree, shrub and ground layer species as part of the natural regenerative cycle.

## ***Threatened ecological communities***

- L. The vegetation removed comprised:
  - PCT 39: Coolabah - River Coobah - Lignum woodland wetland of frequently flooded floodplains mainly in the Darling Riverine Plains Bioregion (103 hectares)
  - PCT 40: Coolabah open woodland wetland with chenopod/grassy ground cover on grey and brown clay floodplains (438 hectares)
  - PCT 55: Belah woodland on alluvial plains and low rises in the central NSW wheatbelt to Pilliga and Liverpool Plains regions (78 hectares)
  - PCT 56: Poplar Box - Belah woodland on clay-loam soils on alluvial plains of north-central NSW (134 hectares)
  - PCT 466: Galvanized Burr derived low shrubland of the Brigalow Belt South and Darling Riverine Plains Bioregion (227 hectares)
  - PCT 244 Poplar Box grassy woodland on alluvial clay-loam soils mainly in the temperate (hot summer) climate zone of central NSW (wheatbelt) (40 hectares).
- M. Two of these vegetation communities (PCT 39 and PCT 40) comprise part of the endangered ecological community *Coolabah-Black Box Woodland in the Darling Riverine Plains, Brigalow Belt South, Cobar Penplain and Mulga Lands Bioregion* under the NSW *Threatened Species Conservation Act 1995 (TSC Act)* which is now repealed and replaced by the BC Act.
- N. Based on remnant vegetation sampling it is considered these communities would have also met the minimum condition criteria for the listed *Coolabah - Black Box Woodlands of the Darling Riverine Plains and the Brigalow Belt South Bioregions* endangered ecological community under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*.
- O. The clearing is significant because it occurred in a landscape already extensively cleared for agriculture where less than 30% of all native vegetation remains. It has affected ecological communities that in total have less than 40% of their original extent remaining. In these circumstances, all paddock trees and small patches of degraded woodland are likely to provide resources and ecological functions critical to maintaining the health and regenerative capacity of adjoining areas which comprise these listed ecological communities.

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## ***Threatened species habitat***

- P. The 1,020 hectares of native vegetation was removed from a larger remnant (>5,000ha) that provided habitat connectivity and supported meta-populations of flora and fauna species in an otherwise extensively cleared landscape. This remnant vegetation aided in the maintenance of species populations, preventing extinctions in the surrounding smaller remnant patches.
- Q. The clearing has removed canopy trees, shrubs and ground layer flora species as well as fauna habitat features including feed trees, tree hollows, fallen timber and vegetation litter. The activity has reduced and fragmented the available habitat and detrimentally impacted landscape connectivity in the locality.
- R. The extent of clearing has potentially placed several threatened flora and fauna populations at likely risk of localised extinction. These include the Koala (*Phascolarctos cinereus*), Brown Treecreeper (*Climacteris picumnus*) and Grey-Crowned Babbler (*Pomatostomus temporalis temporalis*) as well as a further thirty-five (35) threatened and five (5) migratory species.

## ***Impacts of the clearing on soil erosion, land degradation or siltation of any river or lake***

- S. No significant soil erosion was evident at the time of the site inspection. The vegetation clearing has been assessed as increasing the probability of soil erosion during high rainfall events which would cause sedimentation/siltation of watercourses and wetland areas identified on 'the property'.
- T. The clearing has impacted the modelled water flow velocities increasing the risk of erosion along the protected riparian zone of Gil Gil Creek which is within the Gwydir Valley Floodplain Management Plan zone.

## ***Remediation***

- U. The work required by this Remediation Order provides for the repair and rehabilitation of endangered ecological communities and other native vegetation.
- V. At the time of the OEH site inspection, the areas cleared on 'the property' had been recently cultivated and sown to non-native crop/grass species. No obvious evidence of native species regeneration was observed. Consequently, it is unknown whether a viable native soil seedbank or lignotubers remain within the areas cleared.

## **OPINION**

- W. I, [REDACTED], Senior Team Leader, Compliance and Regulation - North West, am satisfied that remnant native vegetation has been damaged as a result of the commission of an offence against section 12 of the NV Act.

## **ORDER TO CARRY OUT REMEDIATION WORK**

- X. I, [REDACTED], Senior Team Leader, Compliance and Regulation - North West, order [REDACTED] and [REDACTED] (**the Remediators**) to carry out the following remediation work on 'the property' within the time specified.

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## 1 REMEDIATION AREA

- a) In this Remediation Order (**Order**), **Remediation Area** means the areas defined 'Remediation Areas' in '**Attachment A**'.
- b) The Landholder/Remediators must inform OEH within twenty-one (21) days prior to any change in the ownership, lease agreement or occupancy of the land concerned, 'the property'. And, to what extent that person or persons are aware of the incumbent Order and ongoing environmental responsibilities.

## 2 DURATION

- a) This Order will be in force for 20 years unless amended or withdrawn prior to that date.

## 3 REMEDIATION WORK

### Cultivation

- a) The Remediation Area is to be excluded from cultivation practices; except as required by this Order.
- b) If a crop has already been sown into the Remediation Area at the time of this Order, the sown area must be ploughed in.

### Native vegetation remediation

- c) Native vegetation is to be allowed to regenerate in the Remediation Areas as a priority method of remediation. Unless otherwise specified under this Order.
- d) If, at thirty six (36) months from the date of this order, over-storey species regeneration is occurring at a rate lower than 15 stems per hectare, then, plant over-storey species in accordance with the directions given in **Attachment G**.
- e) The Landholder/Remediator must ensure that planted native vegetation within the Remediation Areas is maintained in accordance with the plant density requirements for the duration of this Order.
- f) Immediately following the completion of initial planting referred to above, the Landholder/ Remediator must:
  - Water all the native vegetation planted.
  - Apply mulch within a one metre radius of each seedling planted.
  - Install tree guards of minimum height four hundred millimetres (400mm) and width three hundred millimetres (300mm) around each seedling planted.
- g) All planted trees must be inspected and monitored quarterly and all dead plantings must be replaced by the time of the annual report submission to ensure required growth is sustained by the time of the five (5) year OEH inspection.
- h) To protect rehabilitating vegetation communities and developing fauna habitat elements, the following activities are not permitted within the Remediation Areas:
  - Soil disturbance except as a requirement of this Order.
  - Disturbance of vegetation except as a requirement of this Order.
  - Installation of new permanent stock watering infrastructure – troughs or tanks.

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## Exotic flora

- i) If any exotic flora or weeds defined as 'Priority Weeds' are identified within the Remediation Areas; the exotic flora must be managed to occupy less than 5% of total ground cover, as soon as practicable. Control measures permitted include:
- Spot application of herbicide.
  - Manual removal.
  - Biological control.

## Pest animals

- j) The Remediator must take all reasonable steps to control pest animals within the remediation area, by any approved means.

## Stock

- k) All stock must be excluded from Remediation Area A within seven days from the issue of this Order.
- l) If stock are found within Remediation Area A, the stock must be removed as soon as practicable
- m) If necessary, fences are to be erected to ensure the exclusion of stock from Remediation Area A.
- n) If the landholder/s wishes to continue grazing rights within the land outside the Remediation Area A, the boundaries of the defined Remediation Area A must be fenced to a standard that excludes stock.
- o) If, at any time, the Remediator becomes aware that any fencing does not continue to exclude stock, the Remediator must replace or repair the fence as soon as practicable.
- p) Sustainable grazing is permitted within Remediation Area B.

## Fire management

- q) The Remediator must take all reasonable steps to prevent wild fire occurring within the Remediation Areas.

## Hazards, chemicals and waste

- r) The use of agrochemicals; fertilisers, insecticides, herbicides, and soil ameliorants (e.g. gypsum, lime) is not permitted on the Remediation Areas except as required by this Order.
- s) Waste is not to be placed, stored or kept in the Remediation Areas.

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## Water, erosion and sediment control

- t) Works in the riparian zones within the Remediation Areas must have suitable consents from the appropriate regulatory authority. They may include:
- Part 7 Permit issued under the *Fisheries Management Act 1994*.
  - A Controlled Activity Approval in accordance with Section 91 of the *Water Management Act 2000*, and the *Guidelines for watercourse crossings on waterfront land*.
- u) Install sediment fences at the head of any gully in accordance with the directions provided in '**Attachment B**' (Landcom, 2004).
- v) Native grasses listed in '**Attachment C**' are to be sown around the head, edges, and within gully surfaces to fifty-five (55) metres either side of [REDACTED].
- w) Jute sausage to be timber pegged along the high bank line to prevent sediment from entering the watercourse, and to retard the velocity of over bank water flow.
- x) A staggered double line of tube stock trees according to the list provided in '**Attachment C**' is to be planted no closer than 20 metres to the edge of drainage lines at 10 metre intervals.
- y) Erosion and sediment control measures must be inspected quarterly AND following high rainfall events to ensure that they remain effective.

## 4 INSPECTIONS AND RECORDS

- a) The Remediator must inspect the Remediation Area four times each reporting period, with a minimum of 80 days between each inspection for the purposes of determining:
- The percentage of ground cover that is comprised of exotic plants and Priority Weeds.
  - If fencing continues to meet the requirements of this Order.
  - If any stock has impacted the Remediation Areas.
  - The presence of pest animals in the Remediation Areas.
  - If there is an increased risk of wild fire within the Remediation Areas.
- b) The following records must be kept by the Remediator for all inspections:
- The date(s) on which the inspection was undertaken.
  - The name of the person who undertook the inspection.
  - Observations made during the inspection.
  - Details of any required work within the Remediation Areas.
  - The date(s) of that work.
- c) All records required to be kept by this Order must be:
- Accurate.
  - In a legible form.
  - Kept for the duration of the Remediation Order.

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## 5 REPORTING

- a) The Remediator must prepare and submit an Initial Works Report to OEH by six weeks after issue of this Order. This report must contain:
- Confirmation of the exclusion of stock and dates of any actions taken to remove stock.
  - The percentage of ground cover that is comprised of exotic plants and priority weeds.
  - An assessment of pest animal presence within the Remediation Areas.
  - Advice of any completed, required, or proposed work within the Remediation Areas.
- b) The Remediator must prepare and submit a Remediation Area Monitoring Report to OEH by 12 months after issue of this Remediation Order and annually thereafter. The report should include:
- Inspection records.
  - Assessment of vegetation within the Remediation Areas A & B.
  - Advice of any completed, required, or proposed work within the Remediation Areas.
- c) Reports can be submitted to OEH using any of the following methods:
- By post or courier to:  
Senior Team Leader  
Compliance and Regulation  
Conservation & Regional Delivery NW  
P.O. Box 2111  
Dubbo NSW 2830
- OR**
- By email to:  
[ROG.North@environment.nsw.gov.au](mailto:ROG.North@environment.nsw.gov.au)  
marked to the attention of the Senior Team Leader Compliance and Regulation

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## 6 DEFINITIONS

In this Order, the following definitions apply:

| Term                            | Definition  |
|---------------------------------|---|
| BC (S&T) Regulation             | <i>Biodiversity Conservation (Savings and Transitional) Regulation 2017</i>   |
| BC Act                          | <i>Biodiversity Conservation Act 2016</i>   |
| Damaged Areas                   | Areas where native vegetation was cleared in contravention of section 12 of the <i>Native Vegetation Act 2003</i>   |
| Clearing                        | Has the same meaning as defined in the <i>Native Vegetation Act 2003</i>  |
| Endangered Ecological Community | Has the same meaning as defined in the <i>Biodiversity Conservation Act 2016</i>  |
| Exotic flora                    | Plant species that are not "native vegetation"  |
| Native vegetation               | Has the same meaning as defined in the <i>Native Vegetation Act 2003</i>  |
| NV Act                          | <i>Native Vegetation Act 2003</i>   |
| OEH                             | The NSW Government Office of Environment and Heritage   |
| Order                           | This document; a Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i>  |
| PCT                             | Plant Community Type  |
| Pest animals                    | Hares, rabbits, feral pigs, feral goats, and camels but does not include stock or native wildlife   |
| Priority Weed                   | Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> - list available at: <a href="http://weeds.dpi.nsw.gov.au/">http://weeds.dpi.nsw.gov.au/</a>                   |
| Remediator                      | The addressee of this Order   |
| Reporting period                | Means each annual period from the commencement of this Order  |
| Stock                           | Means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, domesticated pigs and domesticated goats); it does not include native wildlife                                      |
| Sustainable grazing             | Means grazing by livestock, and the management of grasslands used for grazing, that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation. |
| The Property                    | As defined in this Order  |
| Waste                           | Has the same meaning as defined in the <i>Protection of the Environment Operations Act 1997</i>   |



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## WARNING AND INFORMATION ABOUT THIS ORDER

- It is an offence against section 11.22 of the BC Act to contravene this Order without reasonable excuse or to intentionally obstruct anyone carrying out remediation work under this Order.
- If you fail to comply with this Order the Chief Executive of OEH or his delegate may authorise any other person to enter the Property and carry out all or part of the work and may then recover the cost from you (section 11.18 of the BC Act).
- Under section 11.15(4) of the BC Act this Order may be varied or revoked by a further order.
- Under section 11.23(1) of the BC Act, if you are aggrieved by the decision to make this Order you may appeal to the Land and Environment Court within 30 days of this Order being served on you. However, even if an appeal is lodged, you must comply with this Order, unless the Court orders otherwise.
- Under section 13.11 of the BC Act, your obligation to comply with the requirements of this Order continues until the Order is complied with, even if the due date for compliance has passed.
- OEH may conduct inspections to determine whether this Order is being complied with.
- Words and expressions have the same meaning as words and expressions used in the BC Act or Part 5A of the *Local Land Services Act 2013* (as the case may be), except where a word is specifically defined in this Order.
- A Remediation Order will not negate the potential for enforcement action (including penalty notice or prosecution). A Remediation Order is separate to any potential enforcement action.



Senior Team Leader  
Compliance & Regulation North West  
Conservation & Regional Delivery  
**Office of Environment & Heritage**

(by Delegation)

## References

Landcom. (2004). *Managing Urban Stormwater: Soils and Construction* (4th ed.). New South Wales Government. Retrieved February 2, 2018, from <http://www.environment.nsw.gov.au/resources/water/BlueBookVol1.pdf>

## Attachments:

- |  |         |
|--|---------|
| A. <b>Maps of the Remediation Area</b>                         | 4 pages |
| B. <b>Directions for the installation of sediment controls</b> | 1 Page  |
| C. <b>Flora species to be planted</b>                          | 2 Pages |



**Legend**

- Remediation Area
- Remediation Area A (448 ha)
- Remediation Area B (227 ha)
- Other
- Roads**
- Principal Road
- Secondary Road
- Track
- Watercourse

**"Attachment A"**  
**Overview of the Remediation Areas**

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**Legend**

- Remediation Area**
- Remediation Area A (150 ha)
  - Remediation Area B (10 ha)
- Properties**
- [Redacted]
  - [Redacted]
  - [Redacted]
  - [Redacted]
  - [Redacted]
- Roads**
- Principal Road
  - Secondary Road
  - Track
- Watercourses**
- Watercourse
  - Drainage
- Other**
- Boundary

ADS40 - Morse - 18/09/2015

**"Attachment A"**  
**Detail: South West Remediation Areas**

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 Date published: 18/09/2015



Datum / Projection: GCS GDA 1994  
 Scale: 1 : 10 000





**Legend**

**Remediation Area**

- Remediation Area A (208 ha)
- Remediation Area B (207 ha)

**Proprietary**

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

**Watercourse**

- Watercourse

**Dimensions**

- Dimensions

**Roads**

- Principal Road
- Secondary Road
- Track

ALD40 - Micro - 10/10/2016

**"Attachment A"**  
**Detail: Central Remediation Areas**

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 Date: 10/10/2016





**Legend**

**Remediation Area**

- Remediation Area A (27 ha)
- Remediation Area B (170 ha)

**Roads**

- Principal Road
- Secondary Road
- Track

**Watercourses**

- Watercourse
- Channel

ADS40 - Moree - 18/09/2015

**"Attachment A"**  
**Detail: North East Remediation Areas**

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 Map prepared by Peter de Waard on 20/03/2015

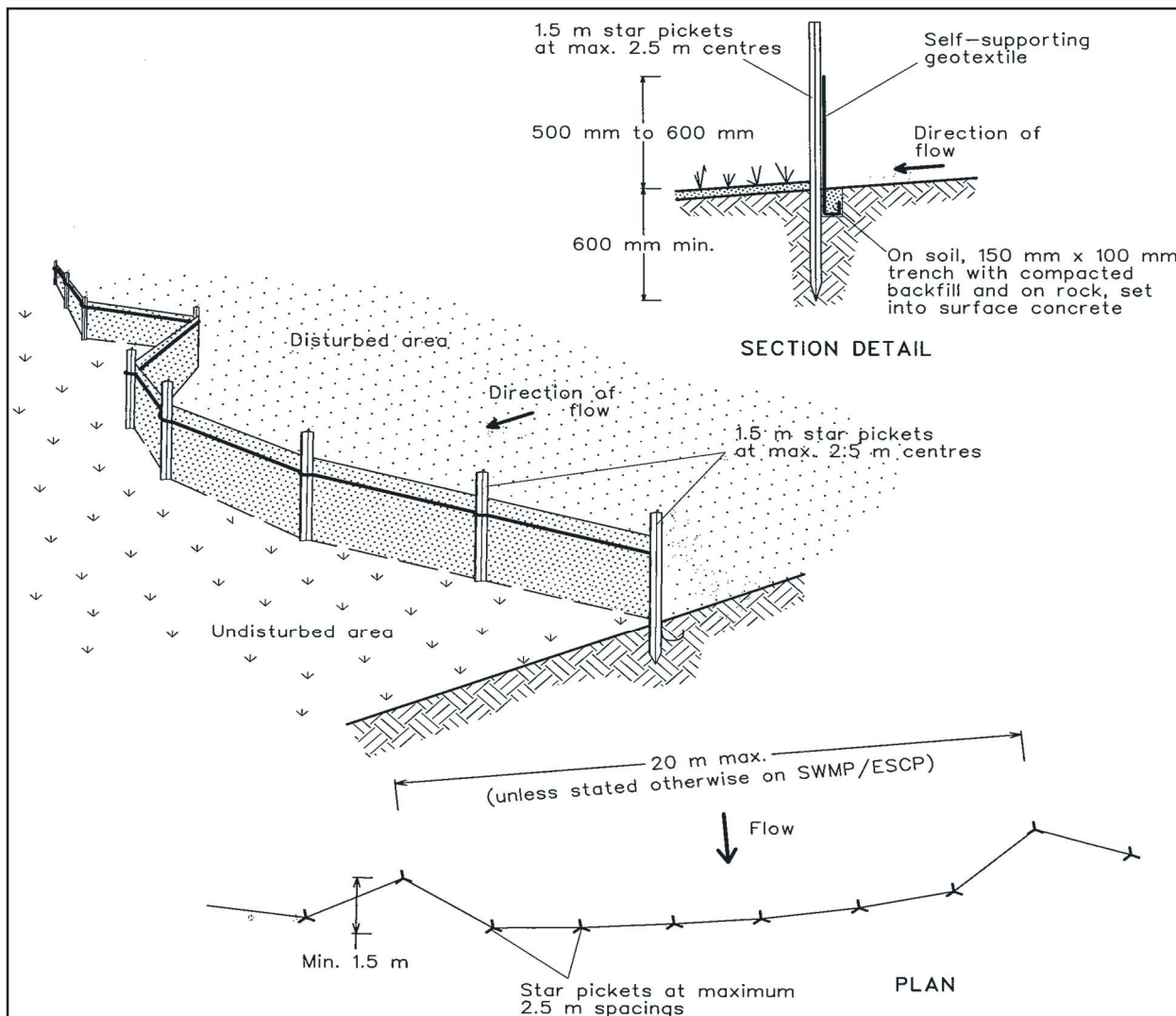


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## Attachment B – Directions for the installation of sediment controls



### Construction Notes

1. Construct sediment fences as close as possible to being parallel to the contours of the site, but with small returns as shown in the drawing to limit the catchment area of any one section. The catchment area should be small enough to limit water flow if concentrated at one point to 50 litres per second in the design storm event, usually the 10-year event.
2. Cut a 150-mm deep trench along the upslope line of the fence for the bottom of the fabric to be entrenched.
3. Drive 1.5 metre long star pickets into ground at 2.5 metre intervals (max) at the downslope edge of the trench. Ensure any star pickets are fitted with safety caps.
4. Fix self-supporting geotextile to the upslope side of the posts ensuring it goes to the base of the trench. Fix the geotextile with wire ties or as recommended by the manufacturer. Only use geotextile specifically produced for sediment fencing. The use of shade cloth for this purpose is not satisfactory.
5. Join sections of fabric at a support post with a 150-mm overlap.
6. Backfill the trench over the base of the fabric and compact it thoroughly over the geotextile.

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## Attachment C – Flora species to be planted

| Area                   | Scientific name                 | Common name           | Type       | Planting density  |
|------------------------|---------------------------------|-----------------------|------------|---|
| Close to creek channel | <i>Acacia stenophylla</i>       | River Cooba           | Small tree | Plant around 5-20m from the bank of the channel at a density of around 15 stems per hectare                       |
| Close to creek channel | <i>Alectryon oleifolius</i>     | Western Rosewood      | Small tree | Plant around 5-20m from the bank of the channel at a density of around 15 stems per hectare                       |
| Close to creek channel | <i>Casuarina cristata</i>       | Belah                 | Tree       | Plant around 2-20m from the bank of the channel at a density of around 25 stems per hectare                       |
| Close to creek channel | <i>Eucalyptus camaldulensis</i> | River Red Gum         | Tree       | Occasionally planted on the bank of the channel at a density of around 5 stems per hectare                        |
| Close to creek channel | <i>Eucalyptus coolabah</i>      | Coolibah              | Tree       | Plant around 2-20m from the bank of the channel at a density of around 25 stems per hectare                       |
| Floodplain             | <i>Acacia excelsa</i>           | Ironwood              | Small tree | Plant on the floodplain more than 55m from the top of the channel bank at a density of around 5 stems per hectare |
| Floodplain             | <i>Acacia stenophylla</i>       | River Cooba           | Small tree | Plant on the floodplain more than 55m from the top of the channel bank at a density of around 5 stems per hectare |
| Floodplain             | <i>Alectryon oleifolius</i>     | Western Rosewood      | Small tree | Plant on the floodplain more than 55m from the top of the channel bank at a density of around 5 stems per hectare |
| Floodplain             | <i>Alstonia constricta</i>      | Quinine Bush          | Small tree | Plant on the floodplain more than 55m from the top of the channel bank at a density of around 5 stems per hectare |
| Floodplain             | <i>Astrebla eltmoides</i>       | Hoop Mitchell Grass   | Grass      | Sow on the floodplain more than 55m from the top of the channel bank  |
| Floodplain             | <i>Astrebla lappacea</i>        | Curly Mitchell Grass  | Grass      | Sow on the floodplain more than 55m from the top of the channel bank  |
| Floodplain             | <i>Astrebla pectinata</i>       | Barley Mitchell Grass | Grass      | Sow on the floodplain more than 55m from the top of the channel bank  |
| Floodplain             | <i>Atalaya hemiglauca</i>       | Whitewood             | Small tree | Plant on the floodplain more than 55m from the top of the channel bank at a density of around 5 stems per hectare |
| Floodplain             | <i>Casuarina cristata</i>       | Belah                 | Tree       | Plant on the floodplain more than 55m from the top of the channel bank at a density of                            |

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| Area          | Scientific name                | Common name            | Type       | Planting density   |
|---------------|--------------------------------|------------------------|------------|--|
|               |                                |                        |            | around 15 stems per hectare  |
| Floodplain    | <i>Eucalyptus coolabah</i>     | Coolibah               | Tree       | Plant on the floodplain more than 55m from the top of the channel bank at a density of around 15 stems per hectare                   |
| Floodplain    | <i>Eremophila mitchellii</i>   | Budda                  | Small tree | Plant on the floodplain at a density of around 15 stems per hectare  |
| Floodplain    | <i>Geijera parviflora</i>      | Wilga                  | Small tree | Plant on the floodplain more than 55m from the top of the channel bank, adjacent to a eucalypt species at about 10 stems per hectare |
| Riparian zone | <i>Enteropogon acicularis</i>  | Curly Windmill Grass   | Grass      | Sow above the creek channel outwards for a distance of 55m   |
| Riparian zone | <i>Paspalidium constrictum</i> | Box Grass              | Grass      | Sow above the creek channel outwards for a distance of 55m   |
| Riparian zone | <i>Paspalidium jubiflorum</i>  | Warrego Summer Grass   | Grass      | Sow above the creek channel outwards for a distance of 55m   |
| Riparian zone | <i>Sporobolus creber</i>       | Western Ratstail Couch | Grass      | Sow above the creek channel outwards for a distance of 55m   |

Local provenance for the above is not required however, should be sourced from the Garah/Moree Region.