



Commonwealth of Australia

Environment Protection and Biodiversity Conservation Act 1999

Section 480D

REMEDIATION DETERMINATION

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Streatham VIC 3351

I, Andrew Tongue, Deputy Secretary of the Department of Agriculture, Water and the Environment, as a delegate of the Minister for the Environment (the Minister) and acting under section 480D of the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**), consider that [REDACTED] (the **Specified Person**) has taken an action, further details of which are set out in paragraphs (1) to (5) below (**the Specified Action**), that has contravened section 18(5) of Part 3 of the EPBC Act (the **Specified Civil Penalty Provision**).

Section 18(5) is a civil penalty provision for the purposes of section 480D(1)(a) of the EPBC Act which prohibits the taking of an action that is likely to have a significant impact on a listed threatened ecological community included in the critically endangered category.

Unless otherwise defined in the text of this remediation determination, defined terms used in this remediation determination have the meanings specified in **Schedule 2**.

Details of the Specified Action

Details of the Specified Action are as follows:

- (1) In March 2020, the Specified Person, or an agent acting on behalf of the Specified Person, undertook earthworks at [REDACTED], being the land best described as [REDACTED] (the **property**).
- (2) At the date of this remediation determination, the Specified Person is, and at all times material, to the taking of the Specified Action was, the registered proprietor of the property.

- (3) The earthworks referred to in paragraph (1) caused impacts to approximately 9 hectares associated with two identified wetlands, being wetland [REDACTED] and [REDACTED] within the property forming part of the *Seasonal Herbaceous Wetlands (Freshwater) of the Temperate Lowland Plains* ecological community, being a listed threatened ecological community included in the critically endangered category for the purposes of section 18(5) of the EPBC Act.
- (4) The impacts described in paragraph (3) had a significant impact on the *Seasonal Herbaceous Wetlands (Freshwater) of the Temperate Lowland Plains* ecological community.
- (5) No referral was made prior to the commencement of earthworks to the wetlands described at paragraphs (1) and (3) above for consideration by the Minister in accordance with Part 7 of the EPBC Act. At no time was an approval granted by the Minister in accordance with Part 9 of the EPBC Act for the agricultural activities described at paragraphs (1) and (3) above.

Making of Remediation Determination and requirement for Remediation Action

In accordance with section 480D(1)(b) of the EPBC Act, I consider it desirable to make a remediation determination in relation to the Specified Action. Accordingly, I hereby require the Specified Person to take the action specified in Schedule 1 to this remediation determination in order to mitigate damage that has been caused to the *Seasonal Herbaceous Wetlands (Freshwater) of the Temperate Lowland Plains* ecological community.

Time that this Remediation Determination is in force

In accordance with section 480H of the EPBC Act, this remediation determination is to come into force on the day on which a copy of the remediation determination is given to the Specified Person and will continue to be in force for a period of six (6) years or until such time as it is either set aside by the Federal Court under section 480K of the EPBC Act, or revoked by the Minister under section 480N of the EPBC Act.

Notice of right of review

As the Specified Person, you may apply to the Minister for reconsideration of this remediation determination pursuant to section 480J of the EPBC Act. Your application for reconsideration must be made within 20 days after receiving a copy of the remediation determination and be addressed to the Assistant Secretary, Environment Compliance Branch, Department of Agriculture, Water and the Environment, GPO Box 858, Canberra City, ACT 2601. A copy of Part 17, Division 14B of the EPBC Act, including section 480J is attached to this remediation determination for your reference.

Dated this 30th day of March 2021



Andrew Tongue
Deputy Secretary
Department of Agriculture, Water and the Environment

SCHEDULE 1

Remediation Action

The Specified Person must undertake the following action:

1. Within three (3) months of this remediation determination coming into force or within three (3) months after the Specified Person is informed that the Minister has affirmed the remediation determination under section 480J(2) of the EPBC Act (if applicable), the Specified Person must submit to the Minister for approval a **Management Plan** for the management and recovery of *Seasonal Herbaceous Wetlands (Freshwater) of the Temperate Lowland Plains* ecological community identified as [REDACTED] and [REDACTED] in Schedule 3 to this instrument. The approved plan must be implemented.
2. The Management Plan must be developed by a **Suitably Qualified Expert**.
3. The Management Plan, once approved by the Department must:
 - (a) Detail a plan to reverse the alterations to the landform created by the drainage and earthworks at the earliest opportunity, without creating any additional surface impacts to the wetlands. This is likely to be when soil moisture levels are such that machine movements do not leave substantial surface soil impacts. If these conditions occur prior to the harvest of the existing wheat crop then the rehabilitation works have priority over the crop harvest.
 - (b) Facilitate and enhance the natural attributes of the **Mitigation Area** via:
 - establishing a weed management strategy to control weed outbreaks. Surveying and containing weed outbreaks on the property as they occur should be in accordance with Agriculture Victoria guidelines.
 - ensuring the habitat values of the Mitigation Area are not degraded through Agricultural activities or application of herbicides or fertilisers.
 - (c) Detail a strategy which ensures that any future development or change to management regimes on the property complies with federal legislation.
 - (d) Detail a monitoring plan to document the recovery of each wetland. Monitoring needs to be conducted according to a specific monitoring plan prepared for the wetlands and approved by the Department, this should include annual monitoring, auditing and reporting to the delegate to the Minister for the Environment.
- a. Within thirty (30) calendar days from the date the Management Plan is approved, the Specified Person must commence the actions stated in the approved Management Plan, and thereafter continue to act in accordance with this plan.
- b. For the duration of this remediation determination, the Specified Person must provide a written report annually to the Department demonstrating compliance with this remediation determination. The first written report must be provided within three (3) months of the Management Plan being approved, and a final report must be provided on the day this remediation determination ends.

SCHEDULE 2

Definitions

Agricultural activities means burning of paddocks, ploughing and or discing, the use of speed tillers and the sowing and management of a canola crop.

Department means the department responsible for the administration of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), currently called the Australian Government Department of Agriculture, Water and the Environment.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and any statutory modification, substitution or re-enactment of that legislation or legislative provision.

Mitigation Area means the area identified as "*Seasonal Herbaceous Wetlands (Freshwater) of the Temperate Lowland Plains*" which are identified as wetlands [REDACTED] and [REDACTED] as shown in Schedule 3.

Management Plan means the plan prepared by a **Suitably Qualified Expert** and approved by the Minister for the Environment as detailed in Schedule 1 of this Remediation Determination.

The Property means [REDACTED]
[REDACTED]

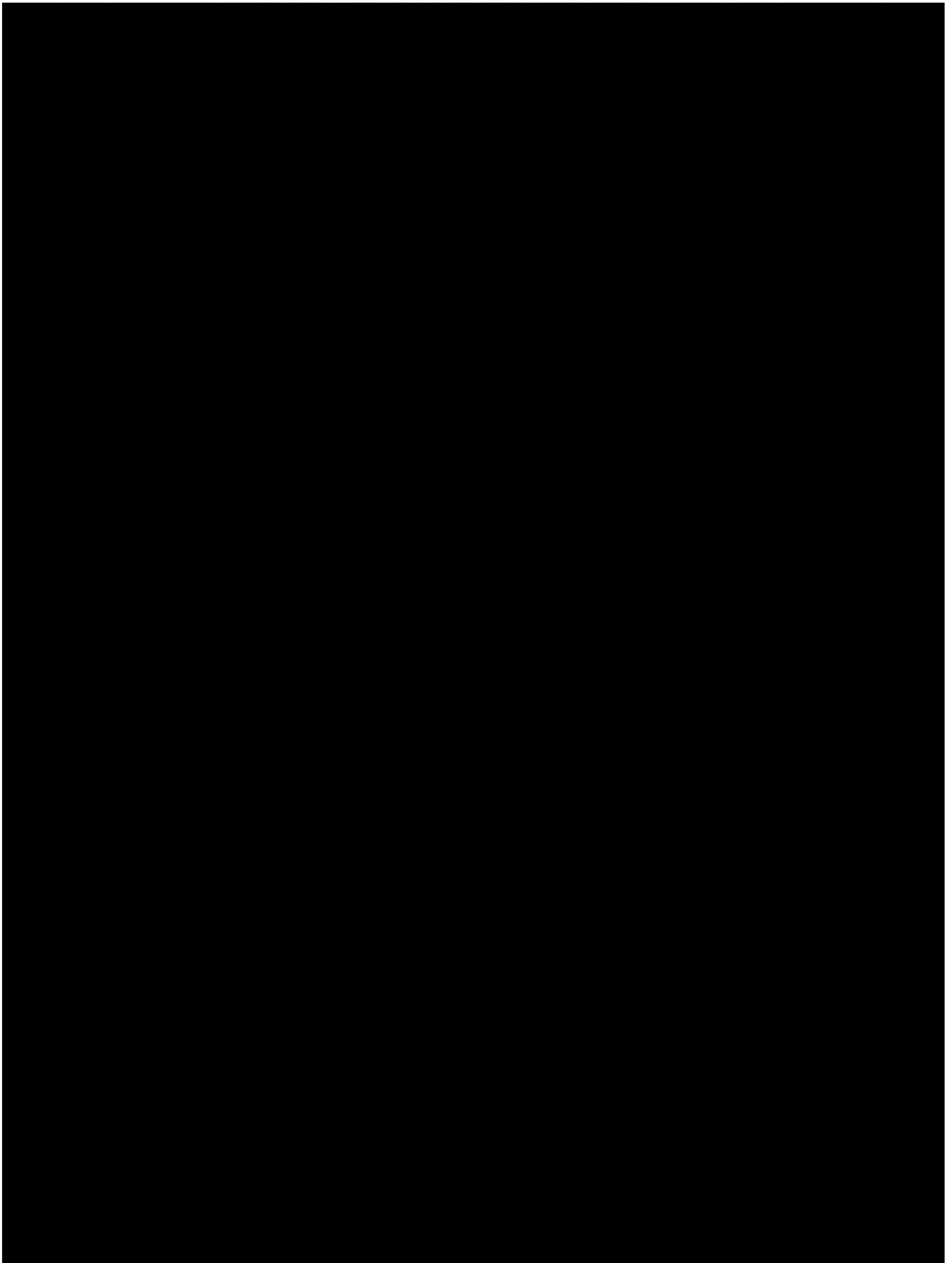
Specified Person means [REDACTED] or a person acting on the direction and authority of [REDACTED]

Suitably Qualified Expert means an ecologist or biologist who has appropriate educational qualifications and/or has gained experience working as an ecologist or biologist for a minimum of 5 years, and with expertise in the *Seasonal Herbaceous Wetlands (Freshwater) of the Temperate Lowland Plains* ecological community, or similar wetland communities.

Weed means pest plant species targeted for control under State legislation of Victoria that has or could have serious economic, environmental or social impacts (declared weeds) and plant species that invade native ecosystems and adversely affect the survival of indigenous flora and fauna (environmental weeds).

Written means any representation of words, figures or symbols capable of being rendered in a visible form by the recipient at the time of receipt and at any time thereafter.

SCHEDULE 3



This below is an extract from the EPBC Act. These sections should be considered in the context of the EPBC Act as a whole, including any related sections and any relevant definitions. You may wish to seek your own legal advice regarding interpretation.

The EPBC Act is available on line at

<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/296E424695CFE7BCCA2576F60019033C?OpenDocument>

Division 14B—Minister's power to make remediation determinations

Subdivision A—Making of remediation determinations

480D Minister may make remediation determination

- (1) If:
 - (a) the Minister considers that an action taken by a person after the commencement of this section contravened a civil penalty provision of Part 3; and
 - (b) the Minister considers it desirable to make an order under this section in relation to the action;the Minister may make a written determination (a **remediation determination**) requiring the person to take action to repair or mitigate damage that may or will be, or that has been, caused by the contravention, to the matter protected by the provision of Part 3.
- (2) The Minister cannot make a remediation determination at a time that is more than 6 years after the time when the person took the action referred to in paragraph (1)(a).
- (3) A remediation determination is not a legislative instrument.

480E Contents of a remediation determination

- (1) A remediation determination must specify the following:
 - (a) the person (the **specified person**) referred to in paragraph 480D(1)(a);
 - (b) the action (the **specified action**) referred to in that paragraph;
 - (c) the civil penalty provision (the **specified civil penalty provision**) of Part 3 referred to in that paragraph;
 - (d) the action (the **remediation action**) that the person is required to take.
- (2) A remediation determination may do all or any of the following in relation to some or all of the remediation action:
 - (a) require action to be taken in a specified place;
 - (b) require action to be taken at, or by, a specified time;
 - (c) require a specified industry standard or code of practice to be complied with in taking action;
 - (d) require the taking of reasonable steps to obtain any Commonwealth, State or Territory approval or authority needed to carry out action;
 - (e) require the preparation, and submission to the Minister for approval, of a plan for taking action, and require action to be taken in accordance with the plan as approved by the Minister;
 - (f) require the spending of a specified amount of money on the taking of action;

- (g) require the payment to a specified person of a specified amount or money, for the purpose of activities directed towards the protection and conservation of the matter protected by the specified civil penalty provision;
 - (h) require the payment to the Commonwealth of a specified amount of money as security for the due taking of action;
 - (i) provide for monitoring, auditing, or reporting to the Minister, in relation to the taking of action.
- (3) A remediation determination must contain a statement to the effect that the specified person may apply for a reconsideration of the determination under section 480J.

480F Notifying owners and occupiers of land of proposed remediation determination

- (1) Before the Minister makes a remediation determination that requires action to be taken on land that is not owned or occupied by the person proposed to be specified in the order, the Minister must:
 - (a) take all practicable steps to identify each person who is an owner or occupier of all or part of the land; and
 - (b) take all practicable steps to advise each person identified of the remediation determination that the Minister proposes to make; and
 - (c) give persons advised at least 20 business days to comment in writing to the Minister on the proposed remediation determination.
- (2) The Minister must take the comments into account in deciding whether to make the proposed remediation determination.

480G Notifying that remediation determination has been made

As soon as practicable after a remediation determination is made, the Minister must:

- (a) give the specified person a copy of the determination; and
- (b) take all practicable steps to advise each person identified as mentioned in paragraph 480F(1)(a) of the making of the remediation determination.

480H Duration of remediation determinations

- (1) A remediation determination comes into force:
 - (a) if a commencement day is specified in the determination (not being a day before paragraph 480G(a) is complied with)—on that day; or
 - (b) otherwise—when paragraph 480G(a) is complied with.
- (2) The determination remains in force:
 - (a) for the period (if any) specified in the order; or
 - (b) until it is set aside by the Federal Court under Subdivision B or it is revoked by the Minister under Subdivision D.

480J Ministerial reconsideration of remediation determinations

- (1) Within 20 days after receiving a copy of a remediation determination as required by paragraph 480G(a), the specified person may apply to the Minister for a reconsideration of the determination.
- (2) On receipt of an application for reconsideration of a remediation determination, the Minister may affirm, vary or set aside the determination.

- (3) The Minister may take account of information and comments from any source the Minister considers appropriate in deciding what action to take in relation to an application under this section.
- (4) The Minister must:
 - (a) advise the specified person of the Minister's decision in relation to an application under this section; and
 - (b) take all practicable steps to advise each person identified as mentioned in paragraph 480F(1)(a) of the Minister's decision in relation to an application under this section.

Subdivision B—Federal Court may set aside remediation determination

480K Applying to Federal Court to have remediation determination set aside

- (1) Within 28 days after any of the following:
 - (a) the specified person receives a copy of a remediation determination as required by paragraph 480G(a); or
 - (b) a remediation determination is affirmed or varied under section 480J; or
 - (c) a remediation determination is varied by the Minister under Subdivision D; the specified person may apply to the Federal Court to have the remediation determination set aside.
- (2) On an application under subsection (1), the Federal Court must set aside the remediation determination if the Court is satisfied that:
 - (a) the specified action did not occur; or
 - (b) the specified person did not take the specified action; or
 - (c) the specified action was not a contravention of the specified civil penalty provision; or
 - (d) the remediation action is not a reasonable measure to repair or mitigate damage that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision.
- (3) In considering whether the remediation determination is a reasonable measure to repair or mitigate damage that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision, the Federal Court must have regard to the following:
 - (a) the nature and extent of the specified action;
 - (b) the nature and extent of the damage to the environment that may or will be, or that has been, caused by the specified action to the matter protected by the specified civil penalty provision;
 - (c) the circumstances in which the specified action took place;
 - (d) whether the specified person has previously been found by a court in proceedings under this Act or the regulations to have engaged in any similar conduct;
 - (e) the cost to the specified person of taking the remediation action.The Federal Court may also have regard to any other matters it considers relevant.
- (4) The Federal Court must not set aside the remediation determination unless it is satisfied as mentioned in subsection (2).

Subdivision C—Complying with remediation determinations

480L Federal Court may order compliance with remediation determination

- (1) If the Minister considers that the specified person has contravened a remediation determination, the Minister may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the specified person has contravened a remediation determination, the Court may make one or more of the following orders:
 - (a) an order directing the specified person to comply with the remediation determination;
 - (b) any other order that the Court considers appropriate.

480M Civil penalty for contravention of remediation determination

- (1) The specified person must not contravene a remediation determination.
- (2) Subsection (1) is a civil penalty provision. Under section 481, the Federal Court may order the specified person to pay a pecuniary penalty not more than the pecuniary penalty the Court could order the person to pay under that section for a contravention of the specified civil penalty provision.

Subdivision D—Variation or revocation of remediation determinations

480N Variation or revocation of remediation determination

- (1) The Minister may, in writing, vary or revoke a remediation determination.
- (2) Sections 480F and 480G apply in relation to the variation or revocation of a remediation determination in the same way as they apply in relation to the making of a remediation determination.