



Environment Protection and Biodiversity Conservation Act 1999

Section 480D

REMEDATION DETERMINATION



I, Lyn O'Connell, Deputy Secretary of the Department of Agriculture, Water and 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* (Cth) (**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 16(1)(b) of Part 3 of the EPBC Act (**the Specified Civil Penalty Provision**).

Section 16(1)(b) 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 the ecological character of a declared Ramsar wetland.

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) Between February 2018 and June 2018, **the Specified Person**, or an agent acting on his behalf, cleared approximately 40 hectares of vegetation and undertook earthworks, including construction of drainage lines, on Lot [REDACTED] of Plan [REDACTED], also known as [REDACTED], King Island, Tasmania (the **property**) and the adjacent Lavinia Ramsar site.
- (2) At the date of this remediation determination, **Specified Person** is, and at all times material to the taking of the **Specified Action** was, the registered proprietor of the **property**.
- (3) The Lavinia Ramsar site is a declared Ramsar wetland. The clearing and earthworks referred to in paragraph (1) have resulted in the removal of approximately 3.2 hectares of vegetation within the Ramsar site and changed the hydrology of the Ramsar site.

- (4) The vegetation removal and hydrological changes referred to in paragraph (3) is likely to have a significant impact on the ecological character of the Lavinia Ramsar site.
- (5) Mr [REDACTED] did not refer the proposed clearing and earthworks 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 clearing and earthworks 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 Mr [REDACTED] to take the action specified in Schedule 1 to this remediation determination in order to mitigate damage that has been caused by the **Specified Action**.

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 Mr [REDACTED] and will continue to be in force for a period of six (6) years from the date the remediation determination is signed or until such time as it is either set aside by the Federal Court under section 480K of the EPBC Act, or varied or revoked by the Minister under section 480N of the EPBC Act, whichever is the sooner.

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 Chief Compliance Officer of the Office of Compliance Branch, Department of the Environment, GPO Box 787, Canberra 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 9th day of June 2020

Lyn O'Connell

.....
Lyn O'Connell
Deputy Secretary
Department of Agriculture, Water and the Environment

SCHEDULE 1

Remediation Action

The **Specified Person** must undertake the following action:

1. Within twelve (12) months of the date of the remediation determination or within twelve (12) months after the Minister affirms the remediation determination under section 480J(2) of the EPBC Act (if applicable), the **Specified Person** must infill the constructed drainage channels shown at **Schedule 3**. The infilling must:
 - a) Be undertaken using soil which was dug from the drainage channels in the course of the specified action
 - i. If sufficient soil is not available as a result of the digging of drainage channels in the course of the specified action, the remainder of the drainage channels are to be infilled using clean fill.
 - b) Raise the level of the drainage channel to match the surrounding soil.
2. Within four (4) months of the date of the remediation determination or within four (4) months after the Minister affirms the remediation determination under section 480J(2) of the EPBC Act (if applicable), the **Specified Person** must install three (3) culverts under the mound, as shown at **Schedule 3**, to re-establish surface water flows between the **property** and the adjacent Lavinia Ramsar site. The culverts must promote low-velocity water flow such as through the use of rocks/boulders located at the bottom of the culvert.
3. Within six (6) months of the date of the remediation determination or within six (6) months after the Minister affirms the remediation determination under section 480J(2) of the EPBC Act (if applicable), the **Specified Person** must undertake tillage and soil aeration of the mound shown at **Schedule 3** to allow natural regeneration of native vegetation along the mound.
4. The **Specified Person** must manage **weeds** and control **weed** outbreaks at the **property**, including through;
 - a) Adhering to the machinery hygiene standards and protocols in 'Keeping it clean - A Tasmanian field hygiene manual to prevent the spread of freshwater pests and pathogens', DPIPWE (2010) http://dpiipwe.tas.gov.au/Documents/15130802_52keepingitcleanspreadswe.pdf and 'Weed and Disease Planning and Hygiene Guidelines - Preventing the spread of weeds and diseases in Tasmania', DPIPWE (2015).
 - b) Surveying to detect presence of **weeds** at least 2 times per year, at least four (4) months apart, and
 - c) Containing **weed** outbreaks at the property as they occur in accordance with the 'Guidelines for Safe and Effective Herbicide Use Near Waterways' DPIPWE (2012) https://dpiipwe.tas.gov.au/Documents/herbicide_guidelinesFINAL2012.pdf.

5. The **Specified Person** must obtain an authority for works from the Tasmanian Parks and Wildlife Service before undertaking any remediation action within the Ramsar site.
6. The **Specified Person** must provide a **written** report annually to the **Department** demonstrating compliance with this remediation determination. The **written** report must be provided within three (3) months of the anniversary of the day on which this remediation determination was approved by the Minister, for a period of five (5) years.

SCHEDULE 2

Definitions

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

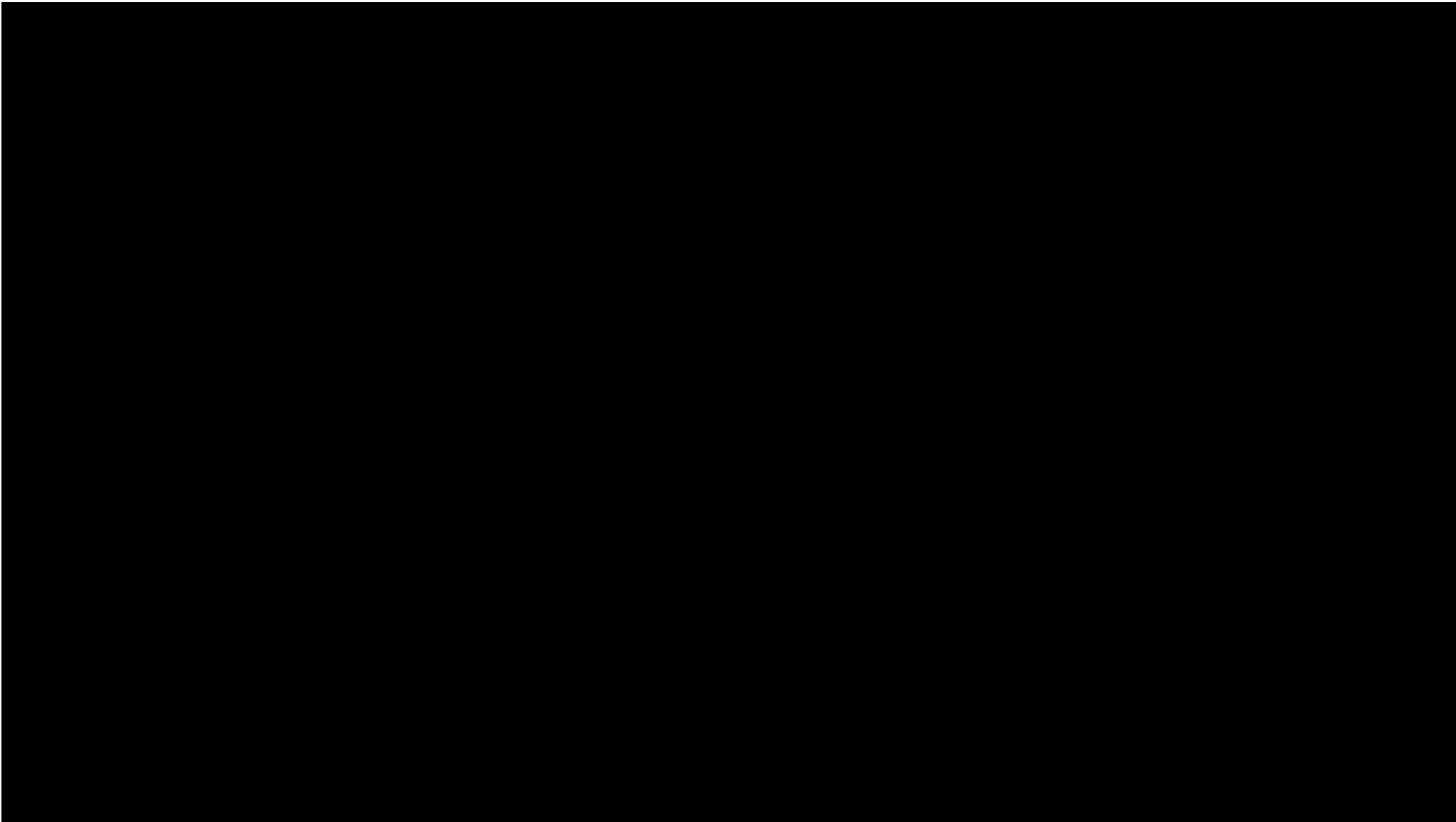
EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* and any statutory modification, substitution or re-enactment of that legislation or legislative provision.

Specified Area means Lot [REDACTED] of Plan [REDACTED], also known as [REDACTED]
[REDACTED]

Specified Person means Mr [REDACTED].

Weed means pest plant species targeted for control under State legislation of Tasmania that have or could have serious economic, environmental or social impacts (declared weeds) and plant species that invade native ecosystems and adversely affect the ecological character of the Ramsar site (environmental weeds). Weeds that are known to pose a threat to the Lavinia wetland include but are not limited to bulrush (*Typha* spp.); thistles (*Carduus* sp. and *Cirsium vulgare*); horehound (*Marrubium vulgare*); ragwort (*Senecio jacobaea*); sea spurge (*Euphorbia paralias*); and asparagus fern (*Asparagus scandens*).

Written means any representation of words, figures or symbols capable of being rendered in a visible form.



Boundaries are indicative only.

While reasonable efforts have been made to ensure that the contents of this publication are factually correct, the Department of Agriculture, Water and the Environment does not accept responsibility for the accuracy or completeness of the contents, and shall not be liable for any loss or damage that may be occasioned directly or indirectly through the use of, or reliance on, the contents of this publication.

Produced by the Environmental Resources Information Network (ERIN), Australian Government Department of Agriculture, Water and the Environment, 2020.



Australian Government
Department of Agriculture, Water and the Environment

Coordinate System: GCS GDA 1994
Acknowledgements:
Imagery captured 1/10/2019 © EarthWatch 2019 DigitalGlobe, Inc

Date: 1/05/2020

This is an extract from the ***Environment Protection and Biodiversity Conservation Act 1999***. This section 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 of the section.

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.