

South Australia

Upper South East Dryland Salinity and Flood Management (Statutory Easements) Variation Regulations 2010

under the *Upper South East Dryland Salinity and Flood Management Act 2002*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Upper South East Dryland Salinity and Flood Management (Statutory Easements) Variation Regulations 2010*.

2—Commencement

These regulations will come into operation on the day on which section 8 of the *Upper South East Dryland Salinity and Flood Management (Extension of Project) Amendment Act 2009* comes into operation.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

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4—Insertion of regulation 8A

After regulation 8 insert:

8A—Statutory easements

- (1) The easements set out in Schedules 3 and 4 are prescribed for the purposes of sections 12 to 12C (inclusive) of the Act.
- (2) The following scheme applies for the purposes of matching an easement to the nature of the land and the nature of the works to be undertaken for the purposes of the Project:
 - (a) the easement set out in Schedule 3 applies in relation to land within a project works corridor that is private land;
 - (b) the easement set out in Schedule 4 applies in relation to land within a project works corridor that is public land.
- (3) A reference in Schedule 3 or 4 to *relevant land* is a reference to land subject to an easement under this regulation.
- (4) In this regulation—

private land means land other than public land;

public land has the same meaning as in section 12(12) of the Act.

5—Insertion of Schedules 3 and 4

After Schedule 2 insert:

Schedule 3—Statutory easement—private land

1—Statutory easement—private land

- (1) The terms of a statutory easement for private land are set out as follows.
- (2) The Minister has exclusive possession over the relevant land.
- (3) The following persons may enter the relevant land at any time:
 - (a) the Minister;
 - (b) an employee of the administrative unit of the Public Service that is, under the Minister, responsible for the administration of the Act;
 - (c) an agent of the Minister;
 - (d) a contractor engaged by the Minister for the purposes of undertaking any designated works;
 - (e) any other person authorised by the Minister in connection with the operation of the easement.

- (4) A person who enters the relevant land under subclause (3) may—
- (a) remove any items, stock or fixtures on the relevant land; and
 - (b) break the surface of, dig, open up or use the relevant land for the purpose of constructing, laying down, fixing, taking up, repairing, replacing, re-laying or examining drains, pipes, channels, banks, bridges, weirs, monitoring stations or other forms of works or infrastructure; and
 - (c) remove weeds or vermin, and clear vegetation and other material, located on the relevant land; and
 - (d) make inspections and surveys, take measurements, undertake tests, and take samples of any substance or thing; and
 - (e) carry out fencing work; and
 - (f) carry out other work authorised by the Minister for any purpose associated with the Project.
- (5) The Minister, and any person acting on behalf of the Minister, may—
- (a) use and maintain, and alter or replace, any drains, pipes, channels, banks, bridges, weirs, stations or other forms of works or infrastructure located on the relevant land; and
 - (b) intercept, divert, store or transport any water on or under the relevant land (including water that has flowed on to the relevant land).
- (6) Subject to the operation of the preceding subclauses, a person must not enter the relevant land, or permit stock or other animals to enter or remain on the relevant land, unless authorised by the Minister to do so.
- (7) Subclause (6) does not, however, apply—
- (a) to temporary access to the relevant land in an emergency situation; or
 - (b) to access to the relevant land by a person before the commencement of work for the purposes of the Project, if the person—
 - (i) does not erect a fence on the relevant land, or along the boundary of the relevant land, without the approval of the Minister; and
 - (ii) does not undertake any activity on or in relation to the relevant land contrary to any written direction of the Minister; and
 - (iii) complies with any written direction of the Minister to vacate the relevant land and to remove any plant, machinery, infrastructure or other items, or any animals, specified by the Minister; or

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- (c) to access to the relevant land by a person after the relevant date in relation to the land—
 - (i) where the relevant land is not fenced and access is for the purposes of grazing stock, carrying out periodic weed or vermin control or eradication, or undertaking fire prevention or control measures, if the person complies with any written direction of the Minister to cease any such activity, to reduce or replace stock, or to remove any plant, machinery, infrastructure or other items, or any animals, specified by the Minister; or
 - (ii) where the access consists of crossing over the relevant land, with or without stock or machinery, at a crossing point established or provided as part of the Project.
- (8) Without limiting a preceding subclause, the owner of the relevant land—
 - (a) must not undertake any activity that constitutes a nuisance or hindrance to the Minister's use of the relevant land or to the exercise of a power conferred on the Minister under the Act or this easement; and
 - (b) without limiting paragraph (a)—must not erect a fence on any part of the relevant land, or along the boundary of the relevant land, without the approval of the Minister;
 - (c) must take reasonable steps to ensure the safety of any person who is permitted by the owner to gain access to the relevant land on account of any access allowed under this easement; and
 - (d) must immediately notify the Minister, in a manner and form determined or approved by the Minister, if the owner damages or obstructs—
 - (i) any aspect of the Project works scheme; or
 - (ii) any Project works, or the operation of any Project works; or
 - (iii) any other aspect of the Project Undertaking,or if the owner becomes aware of any such damage or obstruction.

- (9) In this clause—

designated works means any work or other activity in connection with the implementation of the Project or furthering or enhancing the Project Undertaking;

fencing work has the same meaning as for the purposes of section 21 of the Act;

relevant date, in relation to any land, means—

- (a) the relevant date that applies in relation to the land under section 13 or 13A of the Act (as the case requires); or
- (b) if the Minister has, by notice published in a newspaper in the area where the land is situated, fixed an earlier date for practical completion of works in relation to the land—that earlier date.

2—Saving provision

To avoid doubt, all Project works and other infrastructure of the Minister on the relevant land (including in the nature of a fixture) remain the property of the Minister despite the establishment of the statutory easement or the effect of any term of the statutory easement.

Schedule 4—Statutory easement—public land

1—Statutory easement—public land

- (1) The terms of a statutory easement for public land are set out as follows.
- (2) The Minister has exclusive possession over the relevant land.
- (3) The following persons may enter the relevant land at any time:
 - (a) the Minister;
 - (b) an employee of the administrative unit of the Public Service that is, under the Minister, responsible for the administration of the Act;
 - (c) an agent of the Minister;
 - (d) a contractor engaged by the Minister for the purposes of undertaking any designated works;
 - (e) any other person authorised by the Minister in connection with the operation of the easement.
- (4) A person who enters the relevant land under subclause (3) may—
 - (a) remove any items, stock or fixtures on the relevant land; and
 - (b) break the surface of, dig, open up or use the relevant land for the purpose of constructing, laying down, fixing, taking up, repairing, replacing, re-laying or examining drains, pipes, channels, banks, bridges, weirs, monitoring stations or other forms of works or infrastructure; and
 - (c) remove weeds or vermin, and clear vegetation and other material, located on the relevant land; and
 - (d) make inspections and surveys, take measurements, undertake tests, and take samples of any substance or thing; and

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- (e) carry out fencing work; and
 - (f) carry out other work authorised by the Minister for any purpose associated with the Project.
- (5) The Minister, and any person acting on behalf of the Minister, may—
 - (a) use and maintain, and alter or replace, any drains, pipes, channels, banks, bridges, weirs, stations or other forms of works or infrastructure located on the relevant land; and
 - (b) intercept, divert, store or transport any water on or under the relevant land (including water that has flowed on to the relevant land).
- (6) Subject to the operation of the preceding subclauses, a person must not enter the relevant land, or permit stock or other animals to enter or remain on the relevant land, unless authorised by the Minister to do so.
- (7) Subclause (6) does not, however, apply—
 - (a) to access to a public road subject to the easement, other than access to any area that has been fenced off by or on behalf of the Minister (in which case the authorisation of the Minister is required); or
 - (b) to temporary access to the relevant land in an emergency situation; or
 - (c) to access by a person to an area that has not been fenced off by or on behalf of the Minister, if the person—
 - (i) does not erect a fence on the relevant land, or along the boundary of the relevant land, without the approval of the Minister; and
 - (ii) does not undertake an activity on or in relation to the relevant land contrary to any written direction of the Minister; and
 - (iii) complies with any written direction of the Minister to vacate the relevant land and to remove any plant, machinery, infrastructure or other items, or any animals, specified by the Minister.
- (8) Without limiting a preceding subclause, the public authority with respect to relevant land—
 - (a) must take reasonable steps to maintain any relevant land that has not been fenced off by or on behalf of the Minister (including by carrying out periodic weed or vermin control or eradication, undertaking fire prevention or control measures, and ensuring public safety to a reasonable degree); and

- (b) if Project works are situated underneath a public road—subject to subclauses (9) and (10), must take reasonable steps to maintain the public road (including by providing any road base but not so as to be responsible for any barrier that has been erected by or on behalf of the Minister to protect public safety or to prevent access to any area); and
- (c) must not undertake any activity that constitutes a nuisance or hindrance to the Minister's use of the relevant land or to the exercise of any power conferred on the Minister under the Act or this easement; and
- (d) must immediately notify the Minister, in a manner and form determined or approved by the Minister, if the owner damages or obstructs—
 - (i) any aspect of the Project works scheme; or
 - (ii) any Project works, or the operation of any Project works; or
 - (iii) any other aspect of the Project Undertaking,or if the public authority becomes aware of any such damage or obstruction.
- (9) Subclause (8)(b) does not apply to the extent that access to a public road has been permanently blocked by the Minister.
- (10) The public authority with respect to the bridge known as the *G Cutting Bridge* on the Kingston/Keith road must maintain that bridge, in all respects, at its own expense.
- (11) For the purposes of this clause—

designated works means any work or other activity in connection with the implementation of the Project or furthering or enhancing the Project Undertaking;

fencing work has the same meaning as for the purposes of section 21 of the Act.

2—Saving provision

To avoid doubt—

- (a) all Project works and other infrastructure of the Minister on relevant land (including in the nature of a fixture) remain the property of the Minister despite the establishment of the statutory easement or the effect of any term of the statutory easement; and
- (b) all works and structures constructed or fixed on or in relation to the relevant land (including roads and bridges) by a public authority remain the property, or under the care, control and management, of the public authority; and

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- (c) all other structures lawfully constructed or fixed on or in relation to the relevant land (including pipelines and telecommunications infrastructure) by another entity remain the property of the other entity.

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 21 January 2010

No 4 of 2010