Rights and Responsibilities of Riparian Landholders

Waterway Erosion on your Property

It is important for landholders to understand rights and responsibilities when undertaking activities around waterways. The purpose of this fact sheet is for riparian landholders wanting to carry out works to repair waterway, streambank, gully or instream erosion on their property to better understand the considerations, requirements and approvals that may be required as part of undertaking erosion repair work in a watercourse. **Riparian landholders** are landholders whose land includes an interface with water along gullies, creeks, streams, rivers, wetlands, or estuaries.

What is erosion?

Erosion is the removal of soil particles through the action of water, air, plants, animals, or humans.

Streambank erosion is a natural process that occurs along streambanks occurring through scouring or slumping of the streambank. **Scouring** occurs when flowing water removes soil from streambanks. **Slumping** occurs when chunks of a streambank slip into a waterway.

What causes erosion?

The removal of riparian vegetation from streambanks through clearing, overgrazing, cultivation, vehicle movement or fire, or the removal of sand or gravel from a stream bed can increase streambank erosion.

Weed management, preserving riparian vegetation, restoring vegetation in the riparian zone, managing livestock with stock fencing and off-stream watering, and managing drainage can stabilise streambanks and reduce erosion.

Managing streambank erosion can reduce the impact of sediment on waterways. Stabilising erosion and keeping soil on our land supports agricultural productivity and improves water quality.

Is repairing waterway erosion my responsibility?

A watercourse adjacent to private property is owned by the State government, but a riparian landholder may exercise certain rights under Section 13A of the *Land Act 1994* over the land beside the watercourse. These rights include a right of access of the watercourse, a right of grazing over the adjacent land and the right to bring action against a person who trespasses on the adjacent land. Watercourse right of access is to the low flow channel which is called the thalweg.

In the *Land Act 1994*, a **watercourse** has the same meaning as in the *Survey and Mapping Infrastructure Act 2003*, Section 63 and is as a river, creek or other stream. It can be a stream in the form of an anabranch which leaves the waterway then re-enters it, or a tributary, in which water flows permanently or intermittently, regardless of the frequency of flow events. A watercourse includes in-stream islands, benches and bars. A watercourse does not include a drainage feature.

Although not stated categorically in any legislation, it is accepted that the landholder is responsible for their reach due to their rights of use and access. This could include the management of any gully, streambank, or instream erosion.

Preparing to undertake work to repair gully, streambank, or waterway

Before taking any action to repair waterway erosion on your property there are a few questions to ask and government departments to contact for advice or approval.

Local Council

Is an approval for operational work required?

Depending on the scale and nature of the work, you may be required to apply for and obtain a Development Permit from your local council.

Your council will have a development assessment process to ensure your development is assessed fairly, and a system to set out if and how work can proceed under the *Planning Act 2016*. Your council's planning scheme will provide guidance about whether any repair work that interferes with a watercourse can proceed.

Scenic Rim Regional Council

Logan City Council

Ipswich City Council

Lockyer Valley Regional Council

Contact your local council's development and assessment team to find out how the development and assessment process works prior to commencing any erosion repair work.

Department of Regional Development, Manufacturing and Water

What type of waterway do I have on my property?

Identifying the type of waterway on your property can affect what work can be carried out to repair erosion.

This can be done using **Queensland Globe**, a free online mapping interactive tool to explore Queensland maps, imagery and other spatial data. A Watercourse Identification Map is found as a layer inside Queensland Globe by adding the Inland waters, Water management information and Watercourse identification map *(Water Act 2000)*. **Blue lines** indicate watercourses, **brown lines** are drainage features or gullies, and **white lines** are features that are yet to be determined.

To have an undetermined watercourse determined and mapped, a request may be made in writing to the **Department of Regional Development, Manufacturing and Water.**

Requests can be made to WaterServicesSouth@rdmw.qld.gov.au for the Logan-Albert catchment or WaterServicesGatton@rdmw.qld.gov.au for the Bremer River or Lockyer Creek catchments and must include the property Lot and Plan description.

Is a Riverine Protection Permit required?

Rehabilitation work to repair erosion must occur in compliance with *Part 4 Riverine Protection of the Water Act 2000*. A **Riverine Protection Permit** is required to destroy native vegetation, excavate or place fill in a watercourse under Section 218 of the Act.

For small-scale works to protect a watercourse, lake or spring from erosion, landholders are exempt from requiring a permit if vegetation clearing is at an acceptable limit under the vegetation clearing code, and excavation is less than 500 cubic metres or you are placing less than 150 cubic metres of fill. View guide.

In the *Water Act 2000*, a watercourse is defined in the same way as for the *Land Act 1994*, and is a river, creek or other stream which could include in-stream islands, benches and bars but does not include drainage features.

The minimum requirements that must be achieved to be eligible for exemption for having to apply for and obtain a Riverine Protection Permit can be obtained from the **Department of Regional Development, Manufacturing and Water.**

Department of Agriculture and Fisheries

Will erosion repair work create a barrier to fish movement?

Any instream erosion repair work that has a potential effect on fishery resources or fish habitat may be assessable by the **Department of Agriculture and Fisheries.** To determine if work is assessable, it is necessary to identify whether the watercourse is a waterway as defined under the *Fisheries Act 1994*.

Waterways can be freshwater or tidal waters, permanent waterways or ephemeral waterways which flow intermittently, and they **can include drainage features**. Isolated waterbodies are not waterways if they do not connect at any time to a defined waterway. However, a channel that joins an isolated waterway to a defined waterway during times of flow is a waterway.

If the erosion repair work includes a structure that will create a waterway barrier, fish may be unable to move upstream or downstream of the barrier. The Department provides examples of what is and what is not a waterway barrier.

To check if a waterway is mapped as a Queensland waterway for waterway barrier works, go to **Queensland Globe** and add the Environment, Waterways and QLD waterways for waterway barrier works layers.

Low impact waterways are **green**, moderate impact waterways are **amber**, high impact waterways are **red**, major impact waterways are **purple** and tidal waterways are **grey**.

The Department's *Accepted development requirements for operational work that is constructing or raising waterway barrier works* can be used to determine whether the planned work, particularly the construction of a temporary or permanent waterway barrier, requires approval under Queensland legislation.

Additionally, refer to the *Queensland waterways for waterway barrier works spatial data layer: Guide to determining waterways* to determine whether the site of proposed waterway barrier works requires approval under the Planning Act.

Department of Environment, Science and Innovation

Does erosion repair work involve changes to habitat?

Action to repair gully, streambank or instream erosion may impact on the breeding places of protected animals classified as wild, endangered, vulnerable, near threatened (ENVT), or special least concern, colonial breeder or least concern under the *Nature Conservation Act 1992*. The Wildnet database can be used to find out whether protected species are likely to occur in the vicinity of the proposed erosion repair work.

If animal breeding locations such as creek banks, tree hollows or amphibian or reptile habitat will be interfered with in any way to undertake works, the **Department of Environment, Science and Innovation** requires a *Species Management Program (SMP)* to be completed.

Species may be federally listed under the *Environment Protection and Biodiversity Conservation Act 1999*. The Protected Matters Search Tool can be used to determine whether fauna protected by the EPBC (Environment Protection and Biodiversity Conservation) Act are known or likely to occur within a specified radius of the proposed repair work.

Department of Resources

Does erosion repair work involve changes to habitat or vegetation?

Protected vegetation cannot be cleared. Requesting a vegetation map or property map from the **Department of Resources** will determine whether there is protected vegetation on your property which cannot be cleared as part of any erosion repair works.

For further information, please contact the Resilient Rivers Catchment Management Officer for your catchment: **Logan-Albert catchment,** Scenic Rim Regional Council 5540 5111 or Logan City Council 3412 3412; **Bremer River catchment,** Scenic Rim Regional Council 5540 5111 or Ipswich City Council 3810 6666; **Lockyer Creek catchment,** Lockyer Valley Regional Council 1300 005 872.

This fact sheet is a project of the **Resilient Rivers South East Queensland**, a Council of Mayors (South East Queensland) program supporting action to improve the health and resilience of the catchment and rivers of South East Queensland and Moreton Bay.

The **Logan-Albert Catchment Action Plan (CAP)** identifies the high risk of sediment movement from the catchment and its downstream impact on the Logan and Albert Rivers and Moreton Bay. A goal of the action plan is to keep soil on our land and out of our waterways to support agricultural productivity and improve water quality.

The **Bremer River Catchment Action Plan (CAP)** addresses the very high risk of flooding, erosion, sediment and pollutant movement through the catchment and its impact on downstream creeks, the Brisbane River and Moreton Bay.

The **Lockyer Catchment Action Plan (CAP)** addresses the very high risk of sediment movement from the catchment as identified in key State and Local Government and Seqwater investigations into the 2011 flood event and January 2013 weather event.

To view online, scan the QR code or visit our website, resilientrivers.com.au/community-and-stewardship/