



**Murrumbidgee  
Irrigation**

Murrumbidgee Irrigation Limited  
ABN 39 084 943 037  
Locked Bag 6010 Griffith NSW 2680

T 02 6962 0200  
[info@mirrigation.com.au](mailto:info@mirrigation.com.au)  
[mirrigation.com.au](http://mirrigation.com.au)

## **Development Rules**

**Effective: 1 July 2023 to 30 June 2024**

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## 1. Introduction

- 1.1 This document contains Rules of the Company that are binding under the Water Entitlements Contract and the Water Delivery Contract (the **Contract**). A Customer's Contract binds them to these Rules.
- 1.2 These Rules should be read in conjunction with, and are subject to:
- (1) the Contract;
  - (2) any relevant Rules;
  - (3) the *Water Act 2007* (Cth) and the water market rules and water charge rules made under it;
  - (4) all other relevant laws, regulations, orders and Licences.

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## 2. Definitions and interpretation

- 2.1 In these Rules, the following words have these meanings unless the contrary intention appears:
- (1) **Channel** means a conduit in or on the land intended for the carriage of water and includes both supply channels and drainage channels.
  - (2) **Channel Bank** means the retaining wall of a channel.
  - (3) **Crest Width** means the horizontal width of the top of a Channel Bank as demonstrated in Diagram 1 in Annexure A.
  - (4) **Deep Bore** means a hole in the ground designed to provide access to subsurface water at a depth below the natural surface of greater than 12 metres.
  - (5) **MI Fact Sheet on Customer Weed Management** means the fact sheet published by the Company on its website, titled with the same name and as amended from time to time.
  - (6) **Pests** has the same meaning as that provided by section 15 of the *Biosecurity Act 2015* (NSW)
  - (7) **Shallow Bore** means a hole in the ground designed to provide access to subsurface water from below the natural surface level to a depth of 12 metres; and
  - (8) **Toe of the Bank** means the point of a Channel Bank furthest away from the Channel, where the batter meets natural ground level as demonstrated Diagram 1 in Annexure A.
- 2.2 A term defined in the Contract has the same meaning in these Rules, unless the contrary intention appears.

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## 3. Access to Company Works

- 3.1 The Company grants the Customer non-exclusive access to its Channel Banks, subject to the following conditions:

- (1) the Customer is only entitled to access the Channel Banks for the sole purpose of conducting their farming operations and must not use the Channel Banks for any other purpose, noting that;
  - (a) operations includes the management of weeds and maintenance of access tracks,
  - (b) any application of herbicide for the management of weeds must be:
    - (i) as per the label and in alignment with the conditions set out in the MI Fact Sheet on Customer Weed Management, and
    - (ii) documented on a register maintained by the Customer, specifying as a minimum, the date, time and volume of application, and
  - (c) any maintenance of access tracks must not result in the removal of spoil or a change in the profile of the Channel Bank.
- (2) the Customer's access is non-exclusive and no easement, lease, licence or other right in the land is intended to arise by virtue of this arrangement;
- (3) access to the Channel Banks will be opportunistic and where the Company deems appropriate, which may change from time to time based on the operations of the Company;
- (4) the Customer accesses the Channel Banks at their own risk and acknowledges that the Company makes no warranty, promise, undertaking, representation, statement or otherwise as to the quality or suitability of the Channel Banks for the Customer's access; and
- (5) the Customer's access is subject to any relevant Legal Requirement and does not limit or exclude the Customer's liability (including under the Contract or these Rules) for any damage done to the Company's Works.

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#### **4. Construction, maintenance and repair of Customer works**

##### **4.1 The Customer:**

- (1) must not cause any Damage to the Company's Works;
- (2) must not drain water directly into the Company's Works, except in accordance with the Drainage Use Rules and any Rights of Access held by the Customer; and
- (3) at the Customer's Cost, must ensure that all of the Customer's Works connected to the Company's Works are properly cleaned and maintained where it would be detrimental to the Company or other customers not to do so.

##### **4.2 Where it would be detrimental to the Company or other customers not to do so, the Customer must, in accordance with any relevant Legal Requirements, construct, alter, remove or improve (or procure, in accordance with any relevant Legal Requirements, approval, construction, alteration, removal or improvement of) any of the Customer's Works as deemed necessary or desirable by the Company, acting reasonably, and notified by the Company to the Customer. The Customer must discharge his, her or its obligations under this clause within a reasonable period and, in any event, within one month, after the Company gives notice.**

##### **4.3 If the Customer defaults under rule 4.1 or 4.2:**

- (1) the Company or the Company's Personnel may enter a Landholding and clean, maintain, construct, alter, remove or improve the Customer's Works as deemed necessary or desirable by the Company, acting reasonably; and.
- (2) all Costs reasonably incurred by the Company or the Company's Personnel in respect of matters referred to in clause 4.3(1) will constitute a debt due from the Customer to the Company that must be paid by the Customer to the Company on demand.

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## **5. Construction and planting near boundary of Company Works**

- 5.1 Subject to sub-rules 5.2 and 5.3, the Customer must not, without the prior written consent of the Company, undertake any construction work, construct anything, erect a fence, plant any trees, vegetation or crops, stockpile vegetation, stockpile chemical drums or other materials, or allow any of those things to remain:
- (1) on the Company's land;
  - (2) in relation to a Channel forming part of the Company's Works, as depicted in Diagram 1 of Annexure A, within 10 metres of the Toe of the Bank;
  - (3) in relation to a Pipeline forming part of the Company's Works, as depicted in Diagram 2 of Annexure A, within 10 metres of the edge of outer diameter of the Pipeline; or
  - (4) otherwise, within 10 metres of the Company's Works.
- 5.2 The Customer must not construct or permit to remain on any Landholding any Shallow Bore or Deep Bore within 40 metres of the Company's Works without the prior written consent of the Company.
- 5.3 Despite sub-rules 5.1 and 5.2, the Company may, from time to time, determine the minimum distance required between any construction work on a Landholding and:
- (1) the boundary between the Company's Works and a Landholding;
  - (2) in relation to a Channel forming part of the Company's Works, the Toe of the Bank; or
  - (3) generally, the Company's Works,
- and such determinations bind the Customer.
- 5.4 The Company may remove or require the Customer to remove a private structure (including trees) installed prior to the adoption of the Rules that the Company determines is inconsistent with the objectives of this rule 5.
- 5.5 A Customer who does not comply with any one or more of sub-rules 5.1 to 5.4 of these Rules will be deemed to have committed a material breach under clause 26 of the Contract. In addition to its rights under the Contract, the Company may rectify the default and charge the Customer for the Costs incurred for rectifying the default and for any Loss suffered.
- 5.6 The Company may, acting reasonably or in accordance with a Legal Requirement, remove any structure or carry out any remedial work required in consequence of a breach by a Customer of these Rules without first serving notice of the breach to the Customer.
- 5.7 The Company must not, in exercising its rights under this rule 5, take such action unless that action is reasonably necessary to:
- (1) prevent or remediate any damage, destruction or interference to the Company's Works; or

- (2) to ensure the Company, its employees, agents and servants have unimpeded access to the Company's Works.

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## **6. Change of on-farm practices**

- 6.1 A Customer who makes a change to their on-farm land use practice is responsible for ensuring that:
  - (1) any change, addition, or cessation in on-farm land use practice will comply with all Documents, particularly these Rules and the Drainage Use Rules; and
  - (2) they have sufficient Rights of Access to implement any new irrigation practices which result from the change to their on-farm land use practice.

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## **7. Pests**

- 7.1 The Customer must control Pests on the Landholding in accordance the *Biosecurity Act 2015* (NSW) and:
  - (1) provide any information reasonably requested by the Company with respect to the Customer's weed control activities; and
  - (2) not do anything which is reasonably likely to pollute the Company's Works.
- 7.2 The Customer is permitted to apply any pesticides, herbicides, or control sprays to the Company Works area, provided it is done:
  - (1) as per the label requirements of that product, and
  - (2) in accordance with the requirements set out in the MI Fact Sheet on Customer Weed Management.
- 7.3 If the Customer fails to control Pests and it would be detrimental to the Company's Works or other Customers not to do so within a reasonable time (and in any event, within 30 days) after receiving a notice from the Company, the Company or the Company's Personnel may undertake work to control the relevant Pests.
- 7.4 All Costs reasonably incurred by the Company in carrying out work to control the relevant Pests under sub-rule 7.3 will constitute a debt due from the Customer to the Company that must be paid by the Customer to the Company on demand.
- 7.5 The Customer must notify the Company of any Biosecurity Matter it identifies in, on or around the Company's Works as soon as it becomes aware of its existence.

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## **8. Fencing**

- 8.1 Pursuant to the *Dividing Fences Act 1991* (NSW), the Company is not liable to contribute to the erection or maintenance of fencing infrastructure adjacent to the Company Works where the fencing is to be situated or is situated on land not owned by the Company.
- 8.2 Where the Company owns the land or has an easement on the land where the Company's Works are situated then, if the Company decides that it is reasonably necessary to erect a fence for the protection, maintenance or operation of the Company's Works, the Company may erect such a fence dividing the Landholding from the Company's Works without the consent of the Customer.

- 8.3 Subject to rule 8.4, the cost of any fence erected under sub-rule 8.2 will be the responsibility of the Company.
- 8.4 A Customer will be liable for the Costs incurred by the Company for erecting or repairing a fence if:
- (1) the erection of the fence was in response to a Customer's breach of any one or more of rule 5 of these Rules or clauses 24 or 25 of the Water Delivery Contract; or
  - (2) the Customer had caused the damage to the existing fence that requires repair.
- 8.5 Where a Customer intends to erect a fence adjacent to Company Works on his, her or its Landholding, then the Customer is responsible for ensuring that:
- (1) the fence is constructed in accordance with rule 5.1 of these Rules; and
  - (2) the Customer has received a survey from a registered surveyor that the fence is located on his, her or its Landholding (and not on land owned by the Company or which the Company has an easement over).
- 8.6 Subject to sub-rule 8.7, where the Company causes damage to the Customer's fencing, including where it does so to gain access to Company's Works, the Company must:
- (1) restore the fencing to its pre-damaged condition at no cost to the Customer; or
  - (2) if the Company and the Customer agree, pay to the Customer an amount equal to the pre-damaged value of the fencing.
- 8.7 The Company is not liable to restore a Customer's fence or provide compensation to the Customer under rule 8.6 where the Customer's fence is in breach of rule 8.5 of these Rules.

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## **9. Subdivision**

- 9.1 If the Customer submits an application for subdivision of a Landholding, the Company may:
- (1) determine a new assignment of the Customer's Rights of Access either in accordance with the Customer's application or as differently determined by the Company; and
  - (2) in respect of subdivisions carried out for the purpose of change of land use to urban, rural residential or industrial purposes, the Company may refuse to determine a new allocation of Rights of Access in respect of any one or more of the properties created by the subdivision or impose other conditions on any new contract for any one or more of the properties.
- 9.2 Where a Customer has submitted an application to the Company to subdivide a Landholding and that application has been approved by the Company, then the Customer must:
- (1) carry out works at his, her or its own Cost; and
  - (2) enter into, and procure that any relevant third parties enter into, any new contractual arrangements determined by the Company in connection with the properties created by the subdivision.
- 9.3 If the Company determines a new allocation of Rights of Access under these Development Rules in respect of any one or more of the properties created by the subdivision, those properties will become Landholdings and the Customer must, if required by the Company:
- (1) enter into a new Water Delivery Contract; and

- (2) where the Customer holds Water Entitlements, enter into a new Water Entitlements Contract.

9.4 All reasonable Costs incurred by the Company or the Company's Personnel in:

- (1) entering a Landholding and cleaning, maintaining, constructing, altering, removing or improving the relevant Customer's Works as deemed necessary or desirable by the Company, acting reasonably; or
- (2) installing, commissioning, operating, repairing, replacing, maintaining, removing, extending, expanding, connecting, disconnecting, improving or doing any other thing that the Company considers necessary or desirable to any of the Company's Works or any Meter, or in constructing new Company's Works, or in installing and commissioning any new Meters;

in connection with any subdivision of the Landholding will constitute a debt due from the Customer to the Company that must be paid by the Customer to the Company on demand.

9.5 If any Rights of Access under this rule 9 are not allocated to a Landholding, the Customer must, within 20 Business Days after the Company's determination, either:

- (1) apply to the Company in accordance with the Documents to transfer those Rights of Access; or
- (2) apply to the Company in accordance with the Documents to terminate those Rights of Access.

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## **10. Works by Third Party**

- 10.1 Where a person seeks any permission or consent from a Customer for the purpose of the carrying out construction, maintenance or repairs on a Landholding, to the maximum extent permitted by law, the Customer must not give consent if the construction would contravene these Rules if the construction were carried out by the Customer.
- 10.2 Where a person seeks a permission or consent under rule 10.1 or gives notice to a Customer of an intention to carry out any construction, maintenance or repairs on a Landholding, the Customer must promptly give notice to the Company and promptly provide a copy of any relevant notice given to the Customer by the person.

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## **11. Land or Environment Contamination**

- 11.1 The Customer must not place or permit to remain on the Landholding anything, including unapproved chemicals, hazardous materials, excavated soil/ spoil, trash, rubbish or dead livestock, if it will, or has the potential to:
  - (1) breach, or be likely to breach, any Licences held by the Company;
  - (2) contravene the Company's obligations under a Legal Requirement; or
  - (3) contaminate the Landholding, the Company Works or land owned by the Company.
- 11.2 Where a Customer has received a written notice from the Company for a breach of rule 11.1 and fails to rectify that breach within 28 days after the date of that notice, then the Company:
  - (1) will be entitled to conduct works that ensures the Company's Works are not contaminated by the Landholding in future at the Customer's expense; and



- (2) may report any breach to the responsible Government Agency to the extent that the Customer's breach is a breach of a Legal Requirement
- 11.3 The Company's rights under rule 11.2 are in addition to its rights under clause 26 of the Customer's Water Delivery Contract or clause 16 of the Customer's Water Entitlements Contract.

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## **12. Removal of Vegetation**

- 12.1 The Company may remove, destroy, relocate, or trim any vegetation (including trees) on a Customer's Landholding that is, or is likely to cause damage, destruction or interference with Company Works, or where it determines that such action is necessary to allow the Company access to the Company's Works.
- 12.2 The consent of the Customer is not required under sub-rule 12.1 but the Company must act reasonably when taking any such action under that sub-rule.
- 12.3 The Company shall, wherever reasonably possible, notify the Customer prior to the removal of any vegetation proposed to be removed from the Landholding but this is not a condition precedent for the removal or trimming to occur.
- 12.4 Subject to sub-rule 12.5, the Company will pay the Costs associated with the disposal of any vegetation or trees under this rule and, within a reasonable time after removal, reinstate any adversely affected area of the Landholding to a reasonable condition, subject to fair wear and tear.
- 12.5 The Customer will be liable for the Costs associated with the removal, destruction, relocation or trimming of any vegetation where the Customer has breached rule 5 of these Rules.

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## **13. Removal of Material from Company Works**

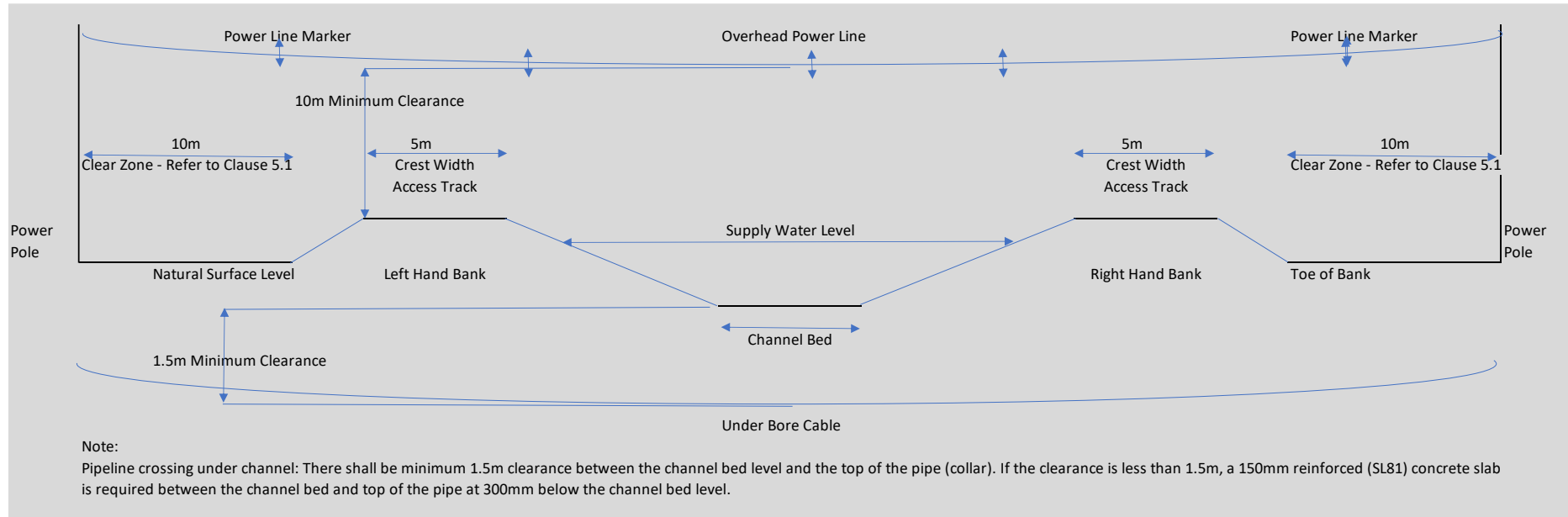
- 13.1 A Customer must not (unless required to take action under rule 11 of these Rules) remove, construct or dig any fill or other materials from any part of the Company's Works.

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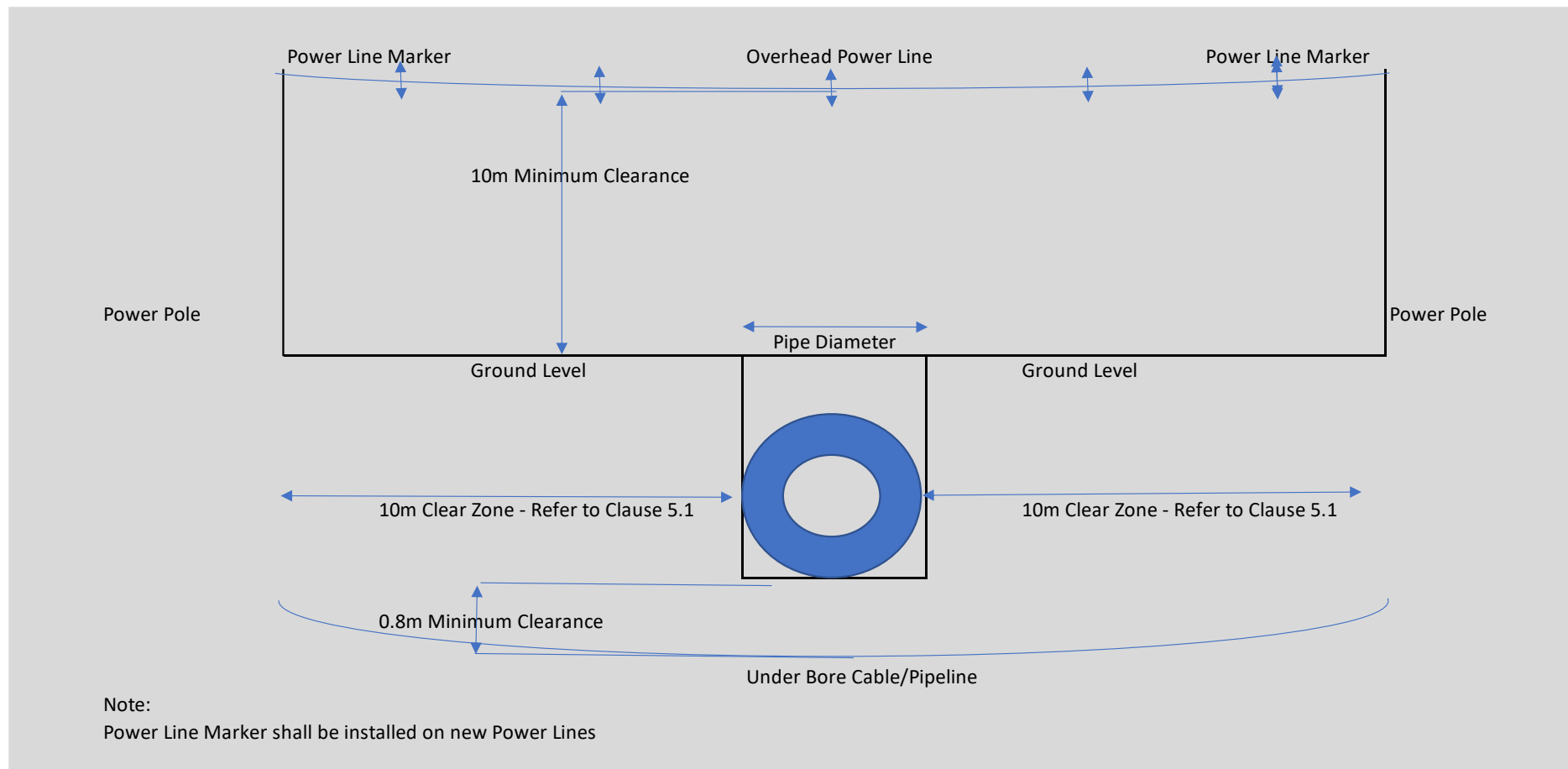
## **14. Consultation**

- 14.1 Where practical and except as otherwise specified in these Rules, the Company will consult with the Customer before implementing any rule that may have a significant adverse impact on the Customer's Landholding.

## ANNEXURE A



*Diagram 1- This illustration is provided as a guide for permanent development adjacent to a channel.*



*Diagram 2 – This illustration is provided as a guide for permanent development adjacent to a pipeline*

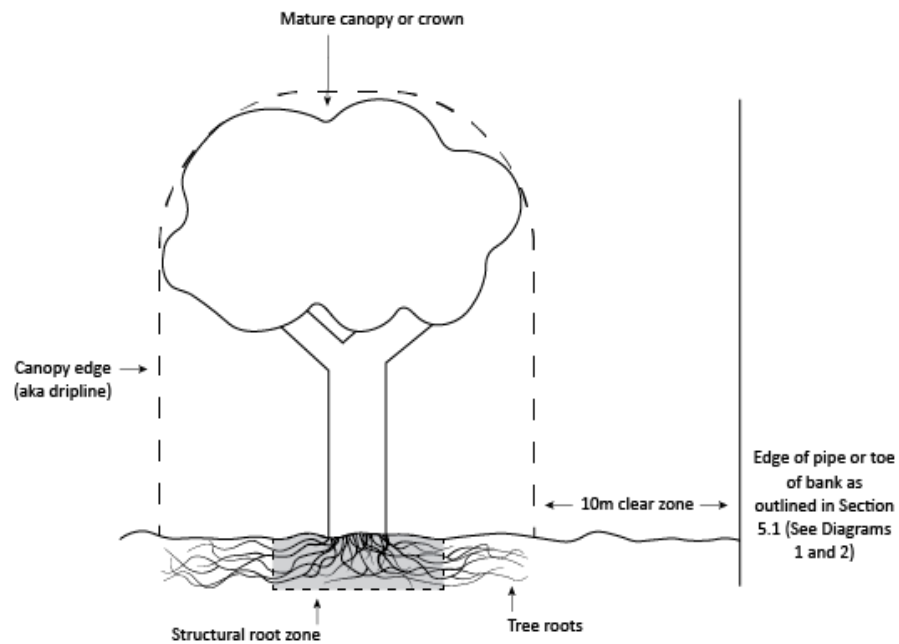


Diagram 3: Preferred planting offset

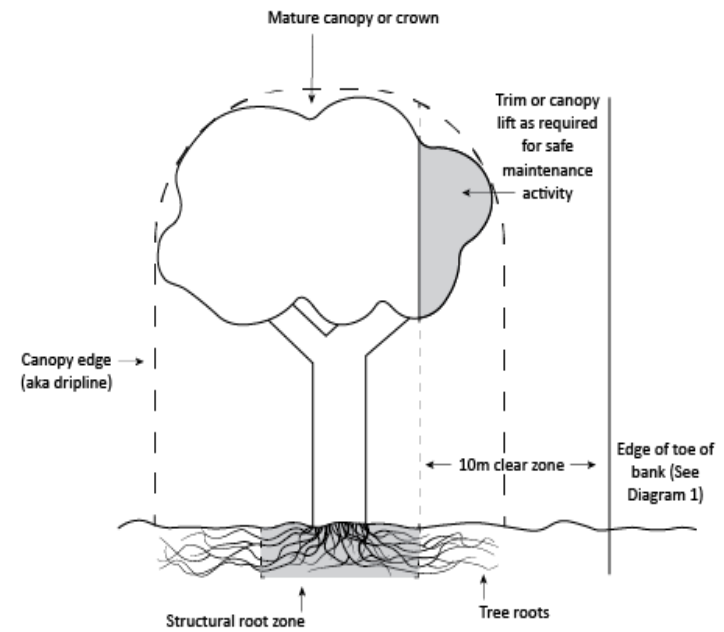


Diagram 4: Alternative solution - planting offset