


Remediation Order



Office of
Environment
& Heritage

ORDER ISSUED TO:



Issued by registered post and by email: 

Notice Number: C0003614
Case Reference Number: 07556-2017
Date: 1 June 2018

BY registered post and by email

ORDER TO CARRY OUT REMEDIATION WORK UNDER SECTION 11.15 OF THE *BIODIVERSITY CONSERVATION ACT 2016 (NSW)*

BACKGROUND

1. The Office of Environment and Heritage (OEH) has responsibility for the administration and enforcement of the now repealed *Native Vegetation Act 2003 (NV Act)* and associated regulations.
2. The NV Act was repealed on 25 August 2017. However, pursuant to clause 58 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017 (BC (S&T) Regulation)*, the repeal of the NV Act does not affect any offence against that Act, or the regulations under that Act, that was committed before the repeal, and the provisions of the NV Act relating to proceedings for an offence, issuing of penalty notices for an offence, and the making of a court order in relation to an offence continue to apply.
3. Pursuant to clause 54 of the BC (S&T) Regulation, Remediation Orders under Division 4 of Part 11 of the BC Act may be issued in relation to damage in or as a result of the commission of an offence under the NV Act committed before 25 August 2017.
4. Pursuant to section 11.15 of the BC Act, if the Chief Executive of OEH is satisfied that damage has occurred in or as a result of the commission of an offence against the NV Act, the Chief Executive may order a person to carry out specified remediation work in a specified manner and within a specified time.
5. Sharon Molloy holds the position of Director, Hunter Central Coast Branch, Regional Operations Division within OEH.
6. Sharon Molloy holds delegated authority on behalf of the Chief Executive of OEH for the purposes of section 11.15 of the BC Act.

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7. [REDACTED] (the Landholder) is the owner of [REDACTED] of [REDACTED] (the Property).

8. The Area referred to in this Order is described in the Remediation Area Map (Appendix A).

BASIS FOR ISSUING REMEDIATION ORDER

9. In 1999, the Department of Land and Water Conservation investigated a report of native vegetation clearing on the Property.
10. In 2002, the Landholder and the [REDACTED] (the Company) of which the Landholder was the sole shareholder, the company secretary and a director, were convicted of unlawful clearing of native vegetation on the Property under section 21(2) of the *Native Vegetation Conservation Act 1997* (No. 50086 of 2001 and No. 50088 of 2001).
11. On 28 August 2002, the Company entered into a registered Property Agreement pursuant to the *Native Vegetation Conservation Act 1997* with the Director General of the Department of Land and Water Conservation of the State of NSW (the Agreement) over the Property for a period of 10 years.
12. The Agreement provides that the Property "...is to be established and maintained as a conservation area". The Management Program prescribed in Schedule 3 to the Agreement includes the following objectives: to ensure the future use of the Property is as a conservation area; to facilitate re-establishment of the vegetation strata present on the Property prior to the land clearing; to facilitate the ecological value of the land for native fauna species by restoring fauna habitat components and food sources; and to use natural regeneration as the principal means of achieving appropriate revegetation of the land.
13. On 28 April 2014, a report entitled '*Fauna Survey and Constraints Analysis, Proposed Residential Rezoning: [REDACTED]*, [REDACTED]' was prepared for the Landholder. This report identified threatened species and environmental constraints on the property.
14. Native vegetation on the Property had re-established and regenerated under the Agreement.
15. In 2017, OEH investigated a report of native vegetation clearing on the Property between 1 January 2014 and 22 May 2017.
16. Under Part 3 Division 1 Section 12 of the NV Act:
- Native vegetation must not be cleared except in accordance with (a) a development consent granted in accordance with this Act, or (b) a property vegetation plan.
 - A person who carries out or authorises the carrying out of clearing in contravention of this section is guilty of an offence.
17. Information and evidence obtained to date, including site inspections, the collection of flora samples by an expert ecologist, a remnant assessment, and formal interviews with the Landholder, indicates that harm to native vegetation occurred on the Property between 1 January 2014 and 22 May 2017.

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18. Information and evidence obtained to-date also indicates that none of the available defences listed in the Act and associated Regulations in relation to the offence apply.
19. The works required by this Order provide for the repair, maintenance, remediation, and rehabilitation of the unlawfully cleared native vegetation and regeneration of native vegetation within the designated Remediation Area within the Property.

OPINION

20. I, Sharon Molloy, Director Hunter Central Coast Branch, am satisfied that native vegetation has been damaged as a result of the commission of an offence against Section 12 of the NV Act.

AIMS OF REMEDIATION

21. The aim of this Order is to:
- Repair damage caused by the clearing;
 - Rehabilitate land affected by the clearing;
 - Manage and control access (including by preventing vehicle access) to the Remediation Area while it is regenerating; and
 - Ensure the Remediation Area is free from weeds.

ORDER TO CARRY OUT REMEDIATION WORK

22. In order to:
- control, abate or mitigate the damage to the area, habitat, plant, animal or vegetation concerned; and
 - maintain, remediate or restore the damaged area, habitat, plant or vegetation concerned.

I, Sharon Molloy, Director Hunter Central Coast Branch, require that [REDACTED] (**the Landholder**) carry out the following remediation work on the Property within the time specified, if any, for each work, or where no time is specified, for a period of fifteen (15) years from the date of this Order.

REMEDIATION AREA

23. In this Order, the Remediation Area is defined in Appendix A.

MANAGEMENT OF REMEDIATION AREA

24. Fencing

- The Landholder must construct a fence around the boundary of the Remediation Area, as shown on the map at Appendix A, to specifications suitable for the purposes of excluding stock by 11 January 2019 (**the fence**).
- The Landholder must ensure that all gates in the fence:
 - remain closed and locked at all times; or
 - are opened only to allow access as required by this Order.

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- c. If at any time the Landholder becomes aware that the fence does not continue to meet the requirements referred to in conditions 24a and 24b, the Landholder must replace or repair the fence to ensure it meets the requirements referred to in conditions 24a and 24b as soon as practicable and in any event within twenty-eight (28) days of becoming so aware.
- d. The Landholder must inspect the Remediation Area four (4) times each reporting period, with a minimum of eighty (80) days between each inspection for the purposes of determining whether the fence continues to meet the requirements referred to in conditions 24a and 24b.

25. Stock management

- a. The landholder must remove all stock from the Remediation Area by 11 January 2019.
- b. Any stock found within the Remediation Area after 11 January 2019 must be removed by the Landholder as soon as practicable and in any event within twenty-eight (28) days of becoming so aware.
- c. If at any time stock is found within the Remediation Area, the Landholder must inspect the fence as soon as practicable to determine if it continues to meet the requirements referred to in conditions 24a and 24b.
- d. The Landholder must inspect the Remediation Area four (4) times each reporting period, with a minimum of eighty (80) days between each inspection for the purposes of determining whether stock are present within the Remediation Area.

26. Weed, Exotic Species, Commercial Crop and Non-native Plant management

- a. The landholder must not plant exotic species, commercial crops and non-native plants in the Remediation Area at any time.
- b. If at any time any exotic species, commercial crops or non-native plant species are found within the Remediation Area, the Landholder must destroy all such exotic species, commercial crops or non-native plant species by either spot application of herbicide or by removal by non-mechanised means as soon as practicable and in any event within twenty-eight (28) days of becoming so aware.
- c. The Landholder must inspect the Remediation Area four (4) times each reporting period with a minimum of eighty (80) days between each inspection for the purposes of determining whether exotic species, commercial crops or non-native plant species are present within the Remediation Area.

27. Pest Herbivore Management

- a. The Landholder must remove all pest herbivores and destroy all rabbit warrens from the Remediation Area by 11 January 2019.
- b. Any pest herbivore found within the Remediation Area after 11 January 2019 must be removed by the Landholder as soon as practicable and in any event within twenty-eight (28) days of becoming so aware.

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- c. The Landholder must inspect the Remediation Area four (4) times each reporting period, with a minimum of eighty (80) days between each inspection for any evidence that pest herbivores have entered the Remediation Area.
- d. If, at any time, any pest herbivores or rabbit warrens are found within the Remediation Area, or if the Landholder becomes aware that there is any evidence that any pest herbivores have entered the Remediation Area, the Landholder must remove such pest herbivores from the Remediation Area and destroy such rabbit warrens as soon as practicable and in any event within twenty-eight (28) days of becoming so aware.

28. Records and Photographs

- a. The following records must be kept by the Landholder in respect of any inspections required by this Order:
 - i. The date(s) on which the inspection was undertaken;
 - ii. The name of the person who undertook the inspection; and
 - iii. The type of inspection undertaken.
- b. The following records must be kept by the Landholder in respect of any work undertaken as a result of any inspection(s):
 - i. Details of any required work within the Remediation Area;
 - ii. The name of the person who undertook the work;
 - iii. The date(s) this work was undertaken; and
 - iv. The date on which this work was completed.
 - v. Photographs of the Remediation Area before and after work was completed and carried out in accordance with Guide to photo monitoring of ecological restoration projects funded by the NSW Environment Trust (OEH 2018) available at <http://www.environment.nsw.gov.au/resources/grants/180068-Ecological-Monitoring-Guide.pdf>
- c. The following records must be kept by the Landholder in respect of any work undertaken as required by this Order:
 - i. Details of work undertaken within the Remediation Area;
 - ii. The name of the person who undertook the work;
 - iii. The date(s) this work was undertaken; and
 - iv. The date on which this work was completed.
 - v. Photographs of the Remediation Area before and after work was completed and carried out in accordance with Guide to photo monitoring of ecological restoration projects funded by the NSW Environment Trust (OEH 2018) available at <http://www.environment.nsw.gov.au/resources/grants/180068-Ecological-Monitoring-Guide.pdf>
- d. All records and photographs required to be kept by this Order must be:
 - i. In a legible form, or in a form that can readily be reduced to a legible form;
 - ii. Kept for at least 5 years after the inspection or event to which they relate took place;

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- iii. Produced in a legible form to any authorised officer of OEH who asks to see them; and
- iv. Be true, accurate and correct.

REPORTING AND AUDIT FUNCTIONS

- 29. The Landholder will be required to complete a Monitoring Report each year for this Order summarising details as listed in condition **28. Records and Photographs**.
- 30. The Landholder must include determinations of all inspections carried out in accordance with this Order during the Reporting Period
- 31. The Landowner must prepare and submit the Monitoring Reports required by this Order:

a. By Registered Post to:
Senior Team Leader Compliance and Regulation
Office of Environment and Heritage
Locked Bag 1002
DANGAR NSW 2309

Or

b. By email to:
hunter.compliance@environment.nsw.gov.au

by **1 July 2019** and 1 July each year thereafter.

DEFINITIONS

In this Order, the following definitions apply:

<p>“Exotic species”</p>	<p>means species introduced from outside of the area concerned; in the case of New South Wales, from overseas and/or interstate.</p> <p>Note: The source of this definition is Harden, G.W. ed. 1990-2002. <i>Flora of New South Wales: Volumes 1 – 4</i>, University of NSW Press.</p>
<p>“Pest herbivores”</p>	<p>means hares, rabbits, and camels but does not include stock.</p>
<p>“Remediation Area”</p>	<p>means the part of [REDACTED] is marked in red on the map included in Appendix A.</p>
<p>“Landholder”</p>	<p>means [REDACTED] owner of [REDACTED], [REDACTED]</p>
<p>“Reporting period”</p>	<p>means each annual period commencing from 1 June 2018 or the duration of this Remediation Order.</p>

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"Stock"	means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, pigs and goats). It does not include native wildlife.
"Weed"	means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> . See also https://www.dpi.nsw.gov.au/biosecurity/weeds

WARNING AND INFORMATION ABOUT THIS ORDER

- It is an offence against section 11.22 of the Biodiversity Conservation Act 2016 (**BC Act**) to contravene this Order without reasonable excuse or to intentionally obstruct anyone carrying out remediation work under this Order. The maximum penalty that a court may impose for this offence is:
 - for a corporation, \$660,000 plus \$66,000 for each day the offence continues, and
 - for an individual, \$132,000 plus \$13,200 for each day the offence continues.
- If you fail to comply with this Order the Chief Executive of OEHL or his delegate may authorise any other person to enter the Property and carry out all or part of the work and may then recover the cost from you (section 11.18 of the BC Act).
- This Order is issued under section 11.15 of the BC Act.
- Under section 11.15(4) of the BC Act this Order may be varied or revoked by a further Order.
- Under section 11.23(1) of the BC Act, if you are aggrieved by the decision to make this Order you may appeal to the Land and Environment Court within 30 days of this Order being served on you. However, even if an appeal is lodged, you must comply with this Order, unless the Court orders otherwise.
- Under section 13.11 of the BC Act, your obligation to comply with the requirements of this Order continues until the Order is complied with, even if the due date for compliance has passed.
- OEHL may conduct inspections to determine whether this Order is being complied with.
- Words and expressions have the same meaning as words and expressions used in the BC Act or Part 5A of the *Local Land Services Act 2013* (as the case may be), except where a word is specifically defined in this Order.
- A Remediation Order will not negate the potential for enforcement action (including penalty notice or prosecution). A Remediation Order is separate to any potential enforcement action.


15 June 2018

Sharon Molloy
 Director Hunter Central Coast Branch
 (by Delegation)

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Appendix A: Map of the Remediation Area

