



Remediation Order

ORDER ISSUED TO:



Notice Number: C0002694
Case Reference Number: 15802-2015, DOC18/339815
Date: 18 June 2018

BY REGISTERED POST & EMAIL

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

BACKGROUND

- A. The Office of Environment and Heritage (**OEH**) has responsibility for the enforcement of the now repealed *Native Vegetation Act 2003 (NV Act)*.
- B. The NV Act was repealed on 25 August 2017.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.
- C. 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.
- D. Pursuant to section 11.15 of the *Biodiversity Conservation Act (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.
- E. Troy Northey, holds the position of Senior Team Leader Compliance & Regulation, Regional Operations Division within OEH.



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- F. Troy Northey holds delegated authority on behalf of the Chief Executive of OEH for the purposes of section 11.15 of the *BC Act*.
- G. [REDACTED] is the owner of [REDACTED], (the "Property")

BASIS FOR ISSUING REMEDIATION ORDER

- H. OEH has investigated a report of land clearing on the Property between 7 August 2015 and 11 November 2015.
- I. Under S 12 of the NV Act, it was an offence to clear native vegetation except in accordance with a development consent granted in accordance with the Act or a property vegetation plan.
- J. OEH is aware that the Property was subject to a Private Native Forestry Property Vegetation Plan ([REDACTED]). The agreement was terminated on the 28 March 2017 by the Environment Protection Authority (EPA), due to multiple breaches of that approval. The investigation by OEH concluded that the native vegetation in the Remediation Order Area has been cleared in contravention of the NV Act and in particular that none of the available defences and exclusions listed in the native vegetation legislation applies to the clearing.
- K. Information gathered to date, including examination of aerial photographs, an interview with you and a field inspection undertaken on 17 November 2015, 2 December 2015, 7 January 2016 and 20 January 2016 indicates that the unlawful clearing of native vegetation first occurred on the property within the areas marked A-J on the attached maps of the remediation area in 2015. During this period, approximately 30 hectares was unlawfully cleared within the Remediation Area.
- L. The works required by this remediation order provide for the remediation and restoration of the damaged areas.

OPINION

- M. I, Troy Northey Senior Team Leader, Regional Operations Division within OEH am satisfied that native vegetation has been damaged in or as a result of the commission of an offence against s12 of the NV Act.

ORDER TO CARRY OUT REMEDIATION WORK

N. In order to:

- a) maintain, remediate or restore the damaged area, habitat, plant, animal or vegetation concerned;

I, Troy Northey Senior Team Leader, Regional Operations Division, order [REDACTED] (the **Remediator**) to carry out the following remediation work on the Property within the time

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specified, if any, for each work, or where no time is specified, for a period of 15 years from the date of this order:

1 REMEDIATION WORK

1.1 In this Order, Remediation Order means the yellow hatched area referred to in **Attachments 1-5**.

2 EXCLUSION OF REMEDIATION AREA Fencing

2.1 The Remediator must construct a fence around the boundary of the Remediation Areas as shown on the maps at Attachments 1-5 for the purposes of excluding stock by 7 December 2018 ("the fence").

2.2 The fence must be constructed as follows:

- a) 5 strand wire;
- b) the highest and lowest most strands must be constructed of plain wire (not barbed or similar material);
- c) the middle 3 strands must be barbed wire;
- d) the bottom strand is to be not less than 15 cm above ground level;
- e) Steel posts must be installed every 4 metres; and
- f) any gates in the fence must be constructed of metal with self-closing locks.

2.3 The Remediator must ensure that all gates in the fence:

- a) remain closed and locked at all times; or
- b) are opened only to allow access required by this Order.

2.4 If at any time the Remediator becomes aware that the fence does not continue to meet the requirements referred to in conditions 2.2 and 2.3, the Remediator must replace or repair the fence as soon as practicable to ensure it meets the requirements referred to in conditions 2.2 and 2.3.

2.5 The Remediator must inspect the Remediation Area 4 times each reporting period, with a minimum of 80 days between each inspection for the purposes of determining whether the fence continues to meet the requirements referred to in conditions 2.2 and 2.3.

Stock management

2.6 The Remediator must remove all stock from the Remediation Area by 7 December 2018.

2.7 Any stock found within the Remediation Area after 7 December 2018 must be removed by the Remediator as soon as practicable and in any event within five days of becoming so aware.

2.8 If at any time stock is found within the Remediation Area the Remediator must inspect the fence as soon as practicable to determine if it continues to meet the requirements referred to in conditions 2.2 and 2.3.



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2.9 The Remediator must inspect the Remediation Area 4 times each reporting period, with a minimum of 80 days between each inspection for the purposes of determining whether stock are present within the Remediation Area.

3 WEED, EXOTIC SPECIES, COMMERCIAL CROP AND NON-NATIVE PLANT MANAGEMENT

- 3.1 Exotic species, commercial crops and non-native plants must not be planted in the Remediation Area.
- 3.2 If at any time any exotic species, commercial crops or non-native plant species are found within the Remediation Area, the Remediator 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 ten days of becoming aware.
- 3.3 The Remediator must inspect the Remediation Area 4 times each reporting period with a minimum of 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.

4 RECORDS

- 4.1 The following records must be kept by [REDACTED] in respect of any inspections required by this Order:
- the date(s) on which the inspection was undertaken;
 - the name of the person who undertook the inspection; and
 - the type of inspection undertaken.
- 4.2 The following records must be kept by [REDACTED] in respect of any work undertaken as a result of any inspection(s):
- details of any required work within the Remediation Area;
 - the date(s) this work was undertaken; and
 - the date on which this work was completed.
- 4.3 All records required to be kept by this Order must be:
- true, accurate and correct;
 - in a legible form, or in a form that can readily be reduced to a legible form;
 - kept for at least 4 years after the inspection or event to which they relate took place; and
 - produced in a legible form to any authorised officer of OEH who asks to see them.

5 REPORTING

- 5.1 [REDACTED] must prepare and submit an Initial Works Report:



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- a) By Registered Post to:
- Senior Team Leader Compliance & Regulation
 - Regional Operations Division, North East
 - Office of Environment and Heritage
 - Locked Bag 914 Coffs
 - Harbour NSW 2450
- or
- b) By courier or by hand to:
- Senior Team Leader Compliance & Regulation
 - Regional Operations Division, North East
 - Office of Environment and Heritage
 - Locked Bag 914
 - Coffs Harbour NSW 2450

By 11 January 2019

5.2 [REDACTED] must prepare and submit a Monitoring Report:

- a) By Registered Post to:
- Senior Team Leader Compliance & Regulation
 - Regional Operations Division, North East
 - Office of Environment and Heritage
 - Locked Bag 914
 - Coffs Harbour NSW 2450
- or
- b) By courier or by hand to:
- Senior Team Leader Compliance & Regulation
 - Regional Operations Division, North East
 - Office of Environment and Heritage
 - Locked Bag 914
 - Coffs Harbour NSW 2450

5.3 The Monitoring Report must include but not be limited to:



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- a) A summary of the work or activities undertaken during the reporting period to remediate the Remediation Area in accordance with this Order; and
- b) Determinations of all inspections carried out in accordance with this Order during the reporting period. by **1 February 2020** and **1 February** each year thereafter, a report for each "reporting period".

6 DEFINITIONS

In this order, the following definitions apply

"Exotic species"	means species introduced from outside of the area concerned; in the case of New South Wales, from overseas and/or interstate. Note: The source of this definition is Harden, G.W. ed. 19902002. <i>Flora of New South Wales: Volumes 1 – 4</i> , University of NSW Press.
"Remediation Area"	means the areas located on the Property shown schematically on the map in Attachments 1-5 outlined in yellow and marked "Remediation Area" being parts of [REDACTED] [REDACTED] (the "Property")
"Remediator"	means [REDACTED]
"Reporting period"	means each annual period commencing from 1 January 2019 for the duration of this Order.
"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>

WARNING AND INFORMATION ABOUT THIS ORDER

- It is an offence against section 11.22 of the BC Act to contravene this Order without reasonable excuse or to intentionally obstruct anyone carrying our 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.



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- If you fail to comply with this Order the Chief Executive of OEH 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.
- OEH 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.

.....
Troy Northey
Senior Team Leader
Regional Operations Division
(by Delegation)

Attachments 1-5:

Map of the Remediation Areas.

Remediation Order



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Remediation Order

ATTACHMENT 6 - INITIAL WORKS REPORT

LANDHOLDER	[REDACTED]
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AS PER REPORTING REQUIREMENTS SET OUT IN THIS REMEDIATION ORDER, THE INITIAL WORKS REPORT MUST BE RECEIVED BY OEH BY 11 JANUARY 2019.

Failure to submit this Initial Works Report by 11 January 2019 may result in:

- the issue of a Penalty Notice for \$1320 (individuals) or \$6600 (corporations); OR
- prosecution.

WARNING AND INFORMATION

Section 11.22 of the *Biodiversity Conservation Act 2016* offence of contravening remediation order or obstruction remediation work, a person must not, without reasonable excuse, contravene a remediation order to which the person is subject, maximum penalty (includes additional daily penalty): Tier 2 monetary penalty, 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.

Please submit your completed Initial Works Report to:

- By Registered Post to:
Senior Team Leader Compliance & Regulation
Regional Operations Division, North East
Office of Environment and Heritage
Locked Bag 914
Coffs Harbour NSW 2450
or
- By courier or by hand to:
Senior Team Leader Compliance & Regulation
Regional Operations Division, North East
Office of Environment and Heritage
Level 8, 24 Moonee Street



Remediation Order

Coffs Harbour NSW 2450

A Initial Works Summary

Please provide the following information regarding compliance with the Remediation Order issued to John Macdonald.

The Remediation Order relates to the following area of land:

[REDACTED], (the "Property").

Please:

- provide details of activities undertaken; and -
- provide dates as appropriate.

Note: the definitions in this Report are the same as in the Remediation Order.

Fencing	
What date was the fence constructed around the Remediation Areas as shown on the map at Attachments 1-5.	Date
If the fence was not constructed around the boundary of the Remediation Areas, please provide an explanation below.	
STOCK MANAGEMENT	
What date were all stock removed from the Remediation Areas?	Date
If all stock were not removed from the remediation areas by the date specified in 2.6 of the Remediation Order, please provide an explanation below.	



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B Signature and Certification

This Initial Works Report may only be signed by a person(s) with legal authority to sign it as set out in the categories below. **Please tick (✓) the box** next to the category that describes how this Initial Works Report is being signed.

If the Landholder is:	the Initial Works Report must be signed and certified:
an individual	<input type="checkbox"/> by the individual Landholder
a company	<input type="checkbox"/> by affixing the common seal in accordance with Corporations Act 2001, or <input type="checkbox"/> by 2 directors, or <input type="checkbox"/> by a director and a company secretary, or <input type="checkbox"/> if a proprietary company that has a sole director who is also the sole company secretary – by that director.

I/We declare and certify that the information in this Initial Works Report is true and correct

SIGNATURE: _____

SIGNATURE: _____

NAME:
(printed) _____

NAME:
(printed) _____



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POSITION: _____

POSITION: _____

DATE: ____/____/____

DATE: ____/____/____

SEAL (if signing under seal)

ATTACHMENT 7 - MONITORING REPORT

LANDHOLDER	██████████
REPORTING PERIOD	1 January 2019 to 31 December 2019

AS PER REPORTING REQUIREMENTS SET OUT IN THIS REMEDIATION ORDER, THE MONITORING REPORT MUST BE RECEIVED BY OEH BY 1 FEBRUARY 2020



Remediation Order

Failure to submit this Monitoring Report by 1 February 2020 may result in:

- the issue of a Penalty Notice for \$1320 (individuals) or \$6600 (corporations); OR
- prosecution.

WARNING AND INFORMATION

Section 11.22 of the *Biodiversity Conservation Act 2016* offence of contravening remediation order or obstruction remediation work, a person must not, without reasonable excuse, contravene a remediation order to which the person is subject, maximum penalty (includes additional daily penalty): Tier 2 monetary penalty, 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.

Please submit your completed Monitoring Report by Registered Post, to:

- a) By Registered Post to:
- Senior Team Leader Compliance & Regulation
Regional Operations Division, North East
Office of Environment and Heritage
Locked Bag 914
Coffs Harbour NSW 2450 or
- b) By courier or by hand to:
- Senior Team Leader Compliance & Regulation
Regional Operations Division, North East
Office of Environment and Heritage
Level 8, 24 Moonee Street
Coffs Harbour NSW 2450

A Monitoring Summary

Please provide the following information regarding compliance with the Remediation Order issued to [REDACTED].

The Remediation Order relates to the following area of land: [REDACTED], (the "Property").

Please:

- tick (✓) the appropriate box where a question is asked; and
- provide details of activities undertaken; and - provide dates as appropriate.



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Note: the definitions in this Report are the same as in the Remediation Order.

STOCK MANAGEMENT			
Inspections		Yes	No
Have inspections for stock in the Remediation Area taken place as required by 2.9 of the Remediation Order? (tick ✓ Yes or No)		<input type="checkbox"/>	<input type="checkbox"/>
Dates of stock inspections			
If there have been no inspections for stock in the Remediation Area, provide an explanation below.			
Was any stock present within the Remediation Area? (tick ✓ Yes or No)		Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
<i>Provide details of the type and amount of stock present</i>			
Removal		Yes	No
Have stock been removed from the Remediation Area? (tick ✓ Yes or No)		<input type="checkbox"/>	<input type="checkbox"/>
<i>Provide details of how stock entered the Remediation Area.</i>			



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Provide details of the method of removal and the amount and type of stock removed (including dates)	Date(s) of removal

Weed, Exotic Species, Commercial Crop and Non-native Plant management			
Inspections		Yes	No
Have inspections for exotic species, commercial crops and non-native plants in the Remediation Area taken place as required by 3.3 of the Remediation Order? (tick ✓ Yes or No)		<input type="checkbox"/>	<input type="checkbox"/>
Dates of weed inspections			
If there have not been inspections, provide an explanation below.			
Were there any exotic species, commercial crops or non-native plants present in the Remediation Area? (tick ✓ Yes or No)		<input type="checkbox"/>	<input type="checkbox"/>
If there were exotic species, commercial crops or non-native plants present in the Remediation Area, describe the species present and their extent.			



Remediation Order

Have any exotic species, commercial crops or non-native plants been removed from the Remediation Area as required by 3.2 of the Remediation Order (tick ✓ Yes or No)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<i>Provide details of the method of destroying weeds or removal of weeds (including dates) and the amount and type of weeds destroyed or removed.</i>		
<i>Provide details of the method of destroying or removal of exotic species, commercial crops or non-native plants and the amount and type of exotic species, commercial crops and non-native plants destroyed or removed (including dates)</i>	<i>Date(s)</i>	

B Signature and Certification

This Monitoring Report may only be signed by a person(s) with legal authority to sign it as set out in the categories below. **Please tick (✓) the box** next to the category that describes how this Monitoring Report is being signed.

If you are uncertain about who is entitled to sign or which category to tick, please contact us on telephone (02) 6659 8200

If the Landholder is:	the Monitoring Report must be signed and certified:
an individual	<input type="checkbox"/> by the individual Landholder
a company	<input type="checkbox"/> by affixing the common seal in accordance with Corporations Act 2001, or <input type="checkbox"/> by 2 directors, or <input type="checkbox"/> by a director and a company secretary, or if a proprietary company that has a sole director who is also the sole company secretary – by that director. <input type="checkbox"/>



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I/We declare and certify that the information in this Monitoring Report is true and correct

SIGNATURE: _____

SIGNATURE: _____

NAME: _____
(printed)

NAME: _____
(printed)

POSITION: _____

POSITION: _____

DATE: ____/____/____

DATE: ____/____/____

SEAL (if signing under seal)

