


Remediation Order

ORDER ISSUED TO:



Email:



Order Number: DOC21/70168
CCMS Case Ref. No.: 201900335
Issue Date: 12 February 2021
Property: 

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

ISSUED VIA: Email and Registered Post – Email:



Date of issue: 12 February 2021

Who are we: The Department of Planning, Industry and Environment (**the Department**) are responsible for the administration and enforcement of the *Biodiversity Conservation Act 2016* (NSW) (**BC Act**), the now repealed *Native Vegetation Act 2003* (**NV Act**), and the Regulations associated with both Acts. Although the NV Act was repealed on 25 August 2017, any offence committed against the NV Act prior to that date remains subject to regulatory actions by the Department. Clause 58 of *Biodiversity Conservation (Savings and Transitional) Regulation 2017* (**BC (S&T) Regulation**) enables the provisions of the NV Act relating to proceedings for an offence, penalty notices, court orders and remediation orders to continue to apply.

Why we serve remediation orders: Pursuant to section 11.15 of the BC Act, if the Environment Agency Head is satisfied that damage has occurred in or as a result of the commission of an offence against the NV Act, the Environment Agency Head may order a person to carry out specified remediation work in a specified manner and within a specified time.

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.

What you are required to do: The works required by this remediation order provide for the control, abatement and mitigation of the damage and/or maintenance, remediation, restoration of the damaged area of the Property. Section 11.16(2) of the BC Act requires you to carry out remediation work required by this Order.

When are you required to act: Immediately from the Date of issue.

What happens if you don't comply: 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 out remediation work under this Order. Contravention of this Order has a maximum penalty of Tier 2. The maximum penalty that a court may impose for a Tier 2 offence is \$660,000 (plus \$66,000 for each day the offence continues) for a corporation, and \$132,000 (plus \$13,200 for each day the offence continues) for an individual.

Remediation Order



Planning,
Industry &
Environment

What your appeal rights are: Section 11.23(1) of the BC Act allows for a person given a remediation order to appeal against the giving of the Order (or any terms of the order) to the NSW Land and Environment Court within 30 days of the service of the Order. However, even if an appeal is lodged, you must comply with this Order, unless the Court orders otherwise. More information on appeals can be found on the NSW Land and Environment Court website <http://www.lec.justice.nsw.gov.au>.

1. DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT OBSERVATIONS

The Department is investigating a report of clearing of native vegetation in a rural regulated area that has been carried out on the property between 22 September 2014 and 23 August 2017.

Under Section 12(1) of the Native Vegetation Act 2003, Part 3 Clearing Native Vegetation, Division 1 Control of Clearing it is an offence to clear native vegetation.

Information and evidence obtained to date, including, information from site inspections, assessment of available imagery, notices and conversations indicates that damage occurred on the Property to Category 2 native vegetation between 22 September 2014 and 23 August 2017

The Remediation Area is designated on the in force Native Vegetation Regulatory Map, prepared pursuant to Division 2 of the LLS Act, as Category 2 – Sensitive Land.

The NVR Map Method Statement explains the scientific and analytical method used to develop the NVR Map in accordance with requirements of the Local Lands Service Act (2013) (LLS Act) and the LLS Regulation. (<https://www.environment.nsw.gov.au/resources/bcact/native-vegetation-regulatory-map-method-170495.pdf>)

Land is mapped to each category based on past clearing or disturbance events, as detected by satellite and aerial imagery, and updated land use data. In limited situations, the legislation may specify criteria to override any previous analyses changing the original designation specified by the map method. The method statement does not otherwise assess the type, condition or environmental value of vegetation.

Part 5A of the Local Lands Service Act (2013) (LLS Act) and the LLS Regulation specifies legislative criteria to be applied to make the two sub-categories of Category 2 regulated land (Category 2 – sensitive regulated land and category 2 – vulnerable regulated land). These areas on the map include (but are not limited to) land with significant biodiversity value, land vulnerable to erosion, offset areas or agreement areas.

For more information on the NVR Map see the [About the Native Vegetation Regulator Map Factsheet](#).

2. REASONS FOR VIEW FORMED

I, [REDACTED], Senior Team Leader, am satisfied of the following:

- a) native vegetation has been damaged in or as a result of the commission of an offence against the Native Vegetation Act 2003, Part 3 Clearing Native Vegetation, Division 1 Control of Clearing, Section 12(1) Clearing Requiring Approval in regulated rural areas, namely, 103.6 hectares at [REDACTED]

In order to:

- a) maintain, remediate or restore the damaged area and vegetation concerned.

I, [REDACTED] Senior Team Leader, order [REDACTED] (**the Remediator**) to 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 twenty-five (25) years from the date of this Order.

[REDACTED], Senior Team Leader holds delegated authority on behalf of the Environment Agency Head for the purposes of section 11.15 of the BC Act.

Remediation Order



Planning,
Industry &
Environment

3. REQUIREMENTS – WHAT YOU MUST DO TO COMPLY

In this Order, Remediation Area means refer to an attached map.

This Order must be complied with from the date of the Order for the Term.

3.1 General Requirements

- 3.1.1 By 31/03/2021 you must remove all stock from the Remediation Area, control stock and prevent them from entering the remediation area.
 - 3.1.1(i) Strategic Grazing may occur within the Remediation Area for a maximum 2 week period, twice a year, followed by a 6 week minimum rest period between periods, in any calendar year being for cattle of a maximum stocking rate of 10 dry sheep equivalents per hectare.
 - 3.1.1(ii) If the Landholder becomes aware that there is evidence that the amount of cattle is exceeding the 10 dry sheep equivalent per hectare in the Remediation Area during a period of Strategic Grazing, the Landholder must immediately remove all excess stock from the Remediation Area.
 - 3.1.1(iii) The landholder must notify the Senior Team Leader, Compliance & Regulation - North East, Biodiversity and Conservation Division, in writing at least two weeks before the commencement of each period of Strategic Grazing for the duration of this Direction.
- 3.1.2 By 30/04/2021 you must remove and prevent weeds by using selective methods of poisoning and manual removal. You must undertake weed control every 13 weeks from 30/04/2021
- 3.1.3 By 30/04/2021 you must abate human disturbances to the Remediation Area.
- 3.1.4 You must inform all purchasers of the land of this Order.
- 3.1.5 You must notify the Environmental Agency Head within 14 days if you intend on selling the land subject to this Order.

3.2 Reporting Requirements

- 3.2.3 By 01/07/2021 you must submit a letter or email outlining your compliance with 3.1 General Requirements of the Remediation Order.
- 3.2.4 By 01/07/2022 you must submit a letter or email outlining your ongoing compliance with 3.1 General Requirements of the Remediation Order and every year on the 01 July for the duration of the Order. Send letters or email to northeast@environment.nsw.gov.au or sent by Registered Post to:

Senior Team Leader, Compliance and Regulation
Department of Planning, Industry and Environment
Locked Bag 914, Coffs Harbour COFFS HARBOUR 2450

Remediation Order

4 AN EXAMPLE OF HOW YOU CAN COMPLY

One way of achieving compliance with this Order would be to:

1. Remove all stock from the remediation area by 31/03/2021
2. Complete fencing of the remediation area by 01/07/2021
3. If you want to put stock on the property, construct a stock proof fence around the boundary of the remediation area
4. Control weeds by selectively poisoning and manually removing weeds 4 times per year.
5. Prevent human disturbances to the remediation area for the duration of the Order, with the exception of work required for the management of weeds.
6. Send in completed monitoring report and other reporting by the 01/07/2021 and every year thereafter.

DEFINITIONS

In this Order, the following definitions apply:

Term	Definition
BC Act	Means the <i>Biodiversity Conservation Act 2016</i>
Damage	Damage has the same meaning as defined in section 11.14 of the <i>Biodiversity Conservation Act 2016</i>
Density	Means counting the number of live tree stems within 20 metre by 20 metre square quadrats in the Remediation Area. 2 quadrats must be evenly distributed and randomly located within the Remediation Area. Live tree stems include individual native trees of all ages, from small juvenile plants to large mature adults. Where a single tree has multiple stems, only the largest stem is counted.
The Department	The NSW Department of Planning, Industry and Environment.
Equally	Means to the same extent. Example: if 200 stems of 4 species are required, each species should have 50 stems
LLS Act	Means the <i>Local Land Services Act 2013</i>
Native vegetation	Has the same meaning as defined in Part 5A of the <i>Local Land Services Act 2013</i>
Order	This document: a Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i>
Remediation Area	Means the areas located on the Property shown schematically on the map in Attachment 1 outlined in red and marked "Remediation Area" being parts of [REDACTED]
Remediator	[REDACTED]
Reporting period	Reporting period Means each annual period from the commencement of this Order
Term	Means the duration of this Order
The Property	[REDACTED]
Weed	Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> .

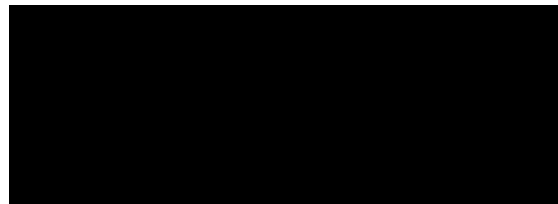
Remediation Order



Planning,
Industry &
Environment

WARNING AND INFORMATION ABOUT THIS ORDER

- If you fail to comply with this Order the Environment Agency Head or his/her 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).
- If you fail to comply with this Order, any person may seek an order from the NSW Land and Environment Court requiring you to rectify that breach of the legislation (section 13.14 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 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.
- DPIE 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 LLS Act (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) under the BC Act or LLS Act. A Remediation Order is separate to any potential enforcement action.



Senior Team Leader
Compliance and Regulation, North East
Biodiversity & Conservation Division

(by Delegation)

Attachment:

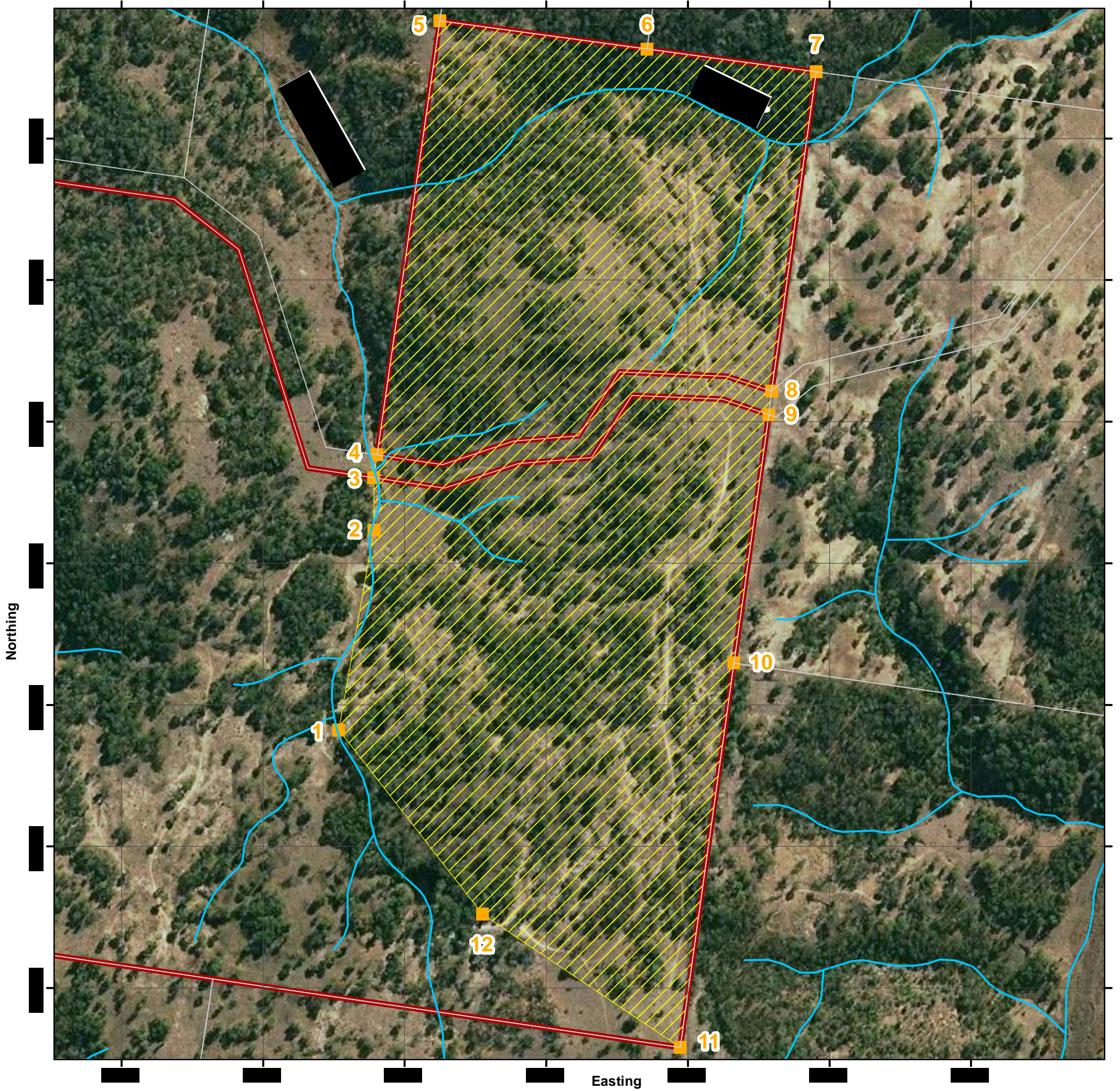
1. Attachment 1: Map of the Remediation Area *Biodiversity Conservation Act 2016* s11.15 Remediation Order.
2. Annual monitoring reporting form

Attachment 1: Map of the Remediation Area

Biodiversity Conservation Act 2016 s11.15 Remediation Order

Property Owner: [REDACTED]
 Remediation Order: 201900335
 Address: [REDACTED]
 Lot/DP: [REDACTED]

County: [REDACTED]
 Parish: [REDACTED]
 LGA: [REDACTED]
 Area: 103.6 hectares
 1036236.4 square metres



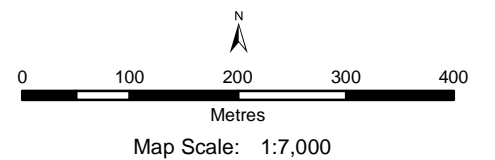
Site	Easting	Northing	Site	Easting	Northing	Site	Easting	Northing	Site	Easting	Northing
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

- Legend**
- Remediation Area
 - The Property
 - Lot / Deposited Plan (DP)
 - Watercourse

Base satellite imagery captured in 2019 includes material © CNES, Distribution Spot Image S.A., France, all rights reserved.

Base cadastral and topographic data supplied by NSW Department of Customer Service (DCS), Spatial Services.

Responsibility lies with the property owner to confirm the accuracy of information supplied by the NSW Land and Property Management Authority.



Map Datum/Projection: GDA 94 MGA Zone 56
 Date: 2 February 2021
 Plan No: S11.15_201900335_V1