

Direction to Carry Out Remedial Work

NOTICE ISSUED TO:

The General Manager
Eurobodalla Shire Council
ABN: 47 504 455 945
PO Box 99
MORUYA NSW 2537

Notice Number: 202203725-03
CCMS Case Ref. No.: 202203725
Issue Date: 31 May 2022

By Email: council@esc.nsw.gov.au

By Registered Post: RPP44 63800 09400 38219 16600

DIRECTION TO CARRY OUT REMEDIAL WORKS UNDER SECTION 91L OF THE *NATIONAL PARKS AND WILDLIFE ACT 1974*

DEFINITIONS

'Property' means [REDACTED] address [REDACTED]

'Potential Aboriginal object' means the object identified on or about 26 November 2021, likely to be a manuport and or possible grindstone of Aboriginal origin.

BACKGROUND

- A. The Department of Planning, and Environment has responsibility for the administration and enforcement of the *National Parks and Wildlife Act 1974* (**NPW Act**) and associated Regulations.
- B. [REDACTED] holds the position of Senior Team Leader, Compliance and Regulation of the Department of Planning and Environment.
- C. [REDACTED] holds delegated authority for the purposes of section 91L of the NPW Act.
- D. Eurobodalla Shire Council carries out road construction and maintenance work on or near [REDACTED], near [REDACTED].
- E. The Department of Planning and Environment is investigating a report of harm to Aboriginal object/s on the Property.
- F. Information gathered to date, including conversations with staff, contractors, or agents and a review of available information and records, indicates that harm to Aboriginal object/s, namely the potential Aboriginal object and AHIMS 57-6-0476 first occurred in the Remediation Area on the Property on or about on or about 26 November 2021 and is ongoing. During this period, the harm caused to Aboriginal object/s includes moving a potential Aboriginal object from the land on which it had been situated and ground disturbance linked to road construction and maintenance work.
- G. Under the NPW Act it is an offence to harm an Aboriginal object. An investigation by the Department of Planning and Environment indicates Aboriginal objects on the Property have been harmed in

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contravention of section 86 of the Act. Information gathered to date indicates that none of the available defences and exemptions listed in the Act and associated Regulations in relation to the offence apply.

- H. The works required by this Direction provide for the mitigation and rehabilitation of unlawfully harmed or damaged Aboriginal objects and the restoration of those objects on the Property.
- I. On 30 May 2022, the Department of Planning and Environment provided Eurobodalla Shire Council with a draft direction to carry out remedial work.
- J. The Department of Planning and Environment received confirmation of Eurobodalla Shire Council's acceptance of the draft direction to carry out remedial work on 31 May 2022.

OPINION

- K. I, [REDACTED], Senior Team Leader, Compliance and Regulation of the Department of Planning and Environment am satisfied that Aboriginal objects have been harmed on the Property as a result of the commission of an offence under section 86 of the Act.

DIRECTION TO CARRY OUT REMEDIAL WORKS

- L. I, [REDACTED], Senior Team Leader, Compliance and Regulation of the Department of Planning and Environment, in order to:
 - a) control, abate or mitigate the harm to the potential Aboriginal object and AHIMS 57-6-0476, and
 - b) protect, conserve, maintain, remediate or restore the potential Aboriginal object and AHIMS 57-6-0476,require Eurobodalla Shire Council perform the following remedial works on the Property within the time specified, if any, for each work, or where no time is specified, for a period of 15 years from the date of this Direction.

REMEDIATION WORKS

1. The Remediation Area is defined as **Attachment A**.
2. Refrain from any further disturbance of the remediation area until such time that the below conditions are completed to a satisfactory standard and provided to the Department of Planning and Environment for review.
3. Engage a suitably qualified archaeologist to prepare an Aboriginal Cultural Heritage Assessment Report for the Remediation Area.
4. Prepare and submit to the Department of Planning and Environment a report on the activities undertaken within the Remediation Area and the likely impacts on both AHIMS 57-6-0476 and the potential Aboriginal object.
5. Prepare and submit to the Department of Planning and Environment a report on Eurobodalla Shire Council's approach to repatriation of the potential Aboriginal object.

3 RECORDS

- 3.0 The following records must be kept by Eurobodalla Shire Council in respect of any inspections required by this Direction:
 - a) The date(s) on which the inspection was undertaken;

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- b) The name of the person who undertook the inspection; and
- c) The type of inspection undertaken.

3.1 The following records must be kept by Eurobodalla Shire Council in respect of any work undertaken as a result of any inspection(s):

- a) Details of any required work within the Remediation Area;
- b) The date(s) this work was undertaken; and
- c) The date on which this work was completed.

3.2 All records required to be kept by this notice must be:

- a) In a legible form, or in a form that can readily be reduced to a legible form;
- b) Kept for at least 4 years after the inspection or event to which they relate took place;
- c) Produced in a legible form to any authorised officer of the Department of Planning and Environment who asks to see them; and
- d) Be true, accurate and correct.

4 REPORTING

4.1 Eurobodalla Shire Council must prepare and submit a Monitoring Report:

- a) To:

██████████

via

██

or by Registered Post to PO Box 514 Wollongong NSW 2520

- b) **By 5pm Wednesday 15 June 2022**

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

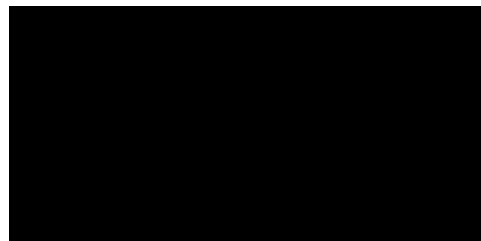
- a) the full name, phone number, email address and street address of the suitably qualified archaeologist that Eurobodalla Shire Council has engaged to undertake an Aboriginal Cultural Heritage Assessment Report for the Remediation Area.
- b) the anticipated timing of the finalisation of the Aboriginal Cultural Heritage Assessment Report.
- c) the anticipated timing of the report on the activities undertaken within the Remediation Area and the likely impacts on both AHIMS 57-6-0476 and the potential Aboriginal object, to be submitted to the Department of Planning and Environment.
- d) the anticipated timing of the report on Eurobodalla Shire Council's approach to repatriation of the potential Aboriginal object, to be submitted to the Department of Planning and Environment.

WARNING AND INFORMATION ABOUT THIS DIRECTION

- It is an offence against section 91Q of the Act to fail to comply with this Direction. The maximum penalty that a court may impose for this offence is:

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- for a corporation, \$220,000 plus \$22,000 for each day the offence continues and
- for an individual, \$110,000 plus \$11,000 for each day the offence continues.
- If you fail to comply with this Direction the Secretary of the Department of Planning and Environment may direct any other person to carry out the works and may then recover the cost from you (section 91O of the Act).
- This Direction is issued under section 91L of the Act.
- Under section 91L(3) of the Act this Direction may be varied or revoked by a further written notice.
- Under section 91T(1) of the Act, if you are aggrieved by the decision to make this Direction you may appeal to the Land and Environment Court within 30 days of this Direction being served on you. However, even if an appeal is lodged, you must comply with this Direction, unless the Court orders otherwise (section 91T(2)).
- Under section 188E of the Act, your obligation to comply with the requirements of this Direction continues until the Direction is complied with, even if the due date for compliance is passed.
- Department of Planning and Environment officers who have been appointed as authorised officers under the NPW Act may conduct inspections to determine whether this Direction is being complied with.
- Words and expressions have the same meaning as words and expressions used in the Act, except where a word is specifically defined in this Direction.
- A Remediation Direction will not negate the potential for prosecution. A Remediation Direction is separate to any potential prosecution.



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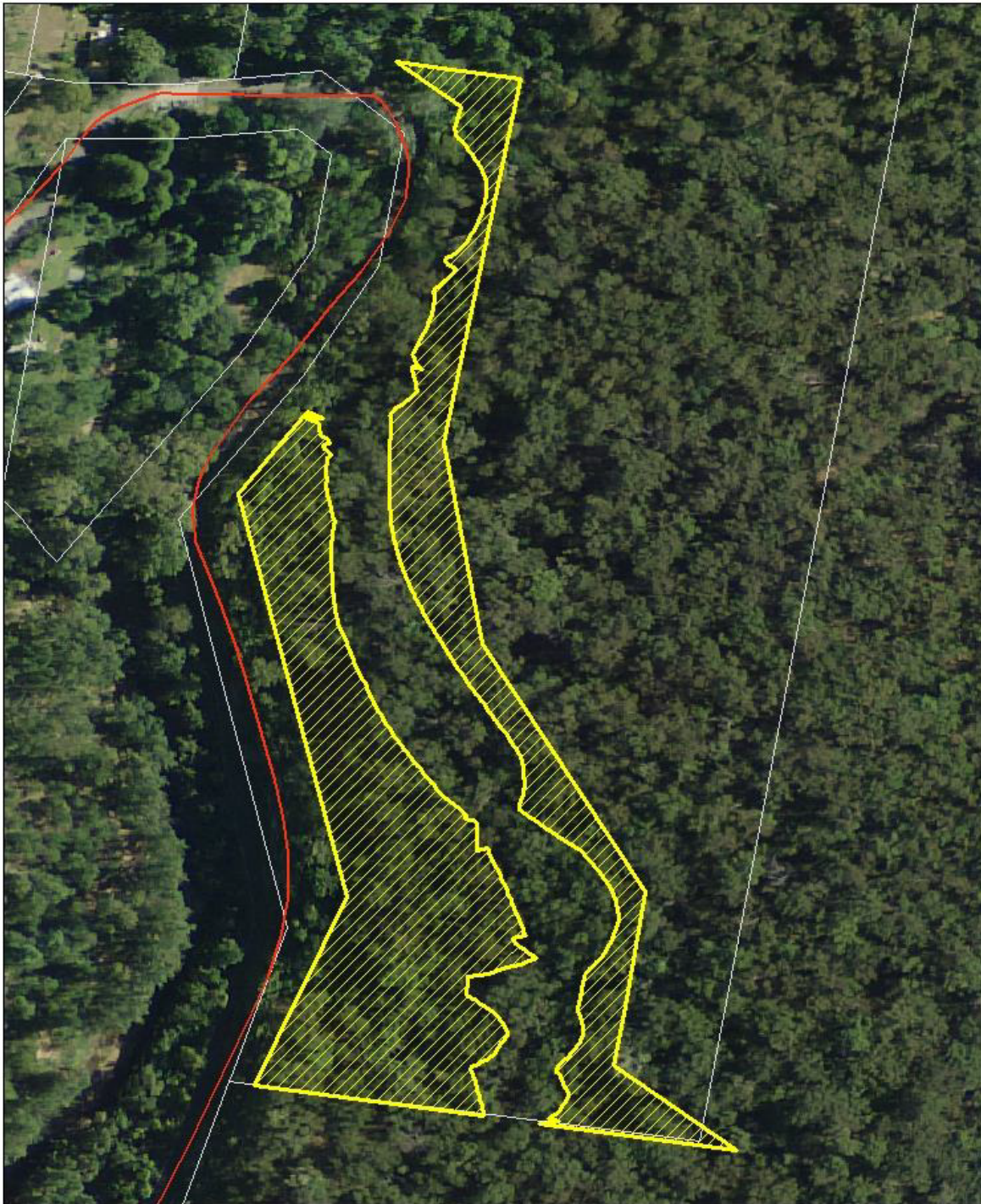


Senior Team Leader, Compliance and Regulation
Department of Planning and Environment
(by Delegation)

Attachments:

- A. Map of the Remediation Area

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|--|---|---|
| <p>Image: 2013 ADS40 mosaic image</p> <p>Legend</p> <ul style="list-style-type: none">Arterial RoadsRemediation AreaLot | <p>Remediation Area</p>  <p><small>Copyright of Department of Planning and Environment. This map is not guaranteed to be free from error or omission. The Department and its employees disclaim liability for any act done on the information in this map and any consequences of such acts or omissions.</small></p> | <p>0 50 100 150 200</p> <p>Datum/Projection: GCS: GDA 1984</p> <p>N</p>   <p>NSW GOVERNMENT</p> |
|--|---|---|

Attachment A Map of the Remediation Area