



**ORDER ISSUED TO:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Order Number: DOC22/803706

CCMS Case Ref. No.: 202203773

Issue Date: 13 February 2023

Property:

[REDACTED]

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

**By: Registered Post**

**Who are we:** The Department of Planning and Environment has responsibilities regarding the administration and enforcement of the *Biodiversity Conservation Act 2016* (NSW) (**the BC Act**) and its associated Regulations, and responsibilities regarding the enforcement of Part 5A of the *Local Land Services Act 2013* (NSW) (**the LLS Act**) and the Regulations under that Part.

**Why we serve remediation orders:** Pursuant to section 11.15 of the BC Act, if the Environment Agency Head (the Secretary of the Department of Planning and Environment) is satisfied that an area, habitat, plant, animal or native vegetation as specified in section 11.15(1) has been damaged in or as a result of the commission of an offence against the BC Act or regulations or against Part 5A of the LLS Act or regulations, the Environment Agency Head may order a person to carry out specified remediation work in a specified manner and within a specified time.

**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 the Order.

**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.

**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 AND ENVIRONMENT OBSERVATIONS

The Department of Planning and Environment is investigating a report of clearing of native vegetation in a regulated rural area on the Property between 25 January 2020 and 15 August 2022.

Pursuant to section 60N of the *Local Land Services Act 2013*, it is an offence to clear native vegetation in a regulated rural area without authorisation.

Information and evidence obtained to date, including an inspection and assessment of spatial imagery, indicates that damage occurred on the Property to Category 2 native vegetation between 25 January 2020 and 15 August 2022.

The damage caused to Category 2 native vegetation comprised of 2.13 hectares of trees, understorey plants and groundcover. Information and evidence obtained to date also indicates that the damage occurred in or as a result of, clearing of native vegetation contrary to section 60N of the LLS Act and that none of the available defences listed in the BC Act and/or Part 5A LLS Act and associated regulations in relation to the offence apply.

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 Regulated Land.

## 2. REASONS FOR VIEW FORMED

I, [REDACTED], Senior Team Leader Compliance and Regulation, am satisfied that the following has been damaged:

- a. native vegetation on Category 2 - Regulated Land and Category 2 - Sensitive Regulated Land under Part 5A of the LLS Act, namely 2.13 hectares of trees, understorey plants and groundcover on the Property,  
in or as a result of the commission of an offence against Part 5A of the LLS Act.

In order to:

- a. control, abate or mitigate the damage to the vegetation concerned, and
- b. maintain, remediate, or restore the damaged vegetation concerned.

I, [REDACTED], Senior Team Leader Compliance and Regulation, order [REDACTED] and [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 fifteen (15) years from the date of this Order:

The Senior Team Leader Compliance and Regulation holds delegated authority on behalf of the Environment Agency Head for the purposes of section 11.15 of the BC Act.

### 3. REQUIREMENTS – WHAT YOU MUST DO TO COMPLY

In this Order, Remediation Area means the area located on the Property shown schematically on the map in Attachment 1 outlined in orange and marked 'Remediation Area' being part of [REDACTED]

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

#### General Requirements

1. By 13 March 2023 you must control stock and prevent them from entering the Remediation Area. The desired outcome is to allow natural regeneration of native vegetation.
2. By 13 March 2023 you must prevent and control weeds by using spot application of herbicide or manual removal (non-mechanised means). You must undertake weed control every 26 weeks from the date of the Order. The desired outcome is to prevent the entry of any new weeds and minimise the impact of weeds on biodiversity.
3. By 13 March 2023 you must manage disturbance to soil and native vegetation in the Remediation Area unless you are required by this Order. The desired outcome is no greater than 5% of the soil surface and existing groundcover in the Remediation Area is disturbed (total area) because of human activities.
4. By 13 March 2023 you must erect signage so that any person entering the Remediation Area becomes aware of the Remediation Area and does not use the land in a manner that would contradict this Order.
5. You must inform all purchasers of the land of this Order.
6. You must notify the Environmental Agency Head within 14 days if you intend on selling the land subject to this Order.

#### Access

7. The Remediators must provide reasonable access to staff of the Department of Planning and Environment for the purposes of administering this Order.
8. The Department of Planning and Environment must provide reasonable notice to the Remediators of an intention to inspect the Remediation Area.

#### Inspections

9. The Remediators must inspect the Remediation Area one (1) time per year, with a minimum of 330 days between each inspection for the purposes of ensuring stock are removed from the Remediation Area and monitoring the impact of weeds on biodiversity and natural regeneration of native vegetation.
10. Near the Remediation Area, there are 2 monitoring points located at the GPS co-ordinates given in Table 2 and mapped at Attachment 1. The co-ordinates given must be permanently marked to ensure the location is the same each monitoring period.

Table 1: Location of monitoring points

Monitoring Point	Latitude	Longitude	Easting	Northing
Monitoring Point 1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Monitoring Point 2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Note: The Remediator may install a star picket, small surveying peg, or wooden stake to locate the same monitoring point between inspections.

### **Records**

11. The following records must be made by the Remediator for all inspections:

- a. the date(s) on which the inspection was undertaken
- b. the name of the person who undertook the inspection
- c. photographs to the north, east, south and west at each monitoring point
- d. observations made during the inspections including the presence or absence of any weeds in the Remediation Area
- e. details of any remediation work required within the Remediation Area, and
- f. the proposed date(s) of that work and time frames for completion.

12. All records required to be kept by this Order must be:

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

### **Reporting**

13. By 13 February 2024 you must submit a completed **Annual Monitoring Report**.

- a. The Annual Monitoring Report must include:
  - i. a summary of activities undertaken during the reporting period.
  - ii. photographs to the north, east, south and west at each monitoring point.
- b. Please submit your completed Annual Monitoring Report

By email to:

[rog.south@environment.nsw.gov.au](mailto:rog.south@environment.nsw.gov.au)

or

By Registered Post to:

Senior Team Leader Compliance and Regulation

Department of Planning and Environment

PO Box 514

Wollongong NSW 2520

### **Note**

14. The Order shall not require the Remediators to clean up metal scrap or waste in part of the Remediation Area mapped at Attachment 1.

#### 4. AN EXAMPLE OF HOW YOU CAN COMPLY

One way of achieving compliance with this Order could include, but not be limited to:

1. Control weeds by spot application of herbicide or manual removal (non-mechanised means) 2 times per year.
2. Take photographs to the north, east, south and west at each monitoring point during each inspection.
3. Manage disturbance to soil and native vegetation in the Remediation for the duration of the Order.
4. Submit a completed Annual Monitoring Report by 13 February 2024 and every year thereafter.

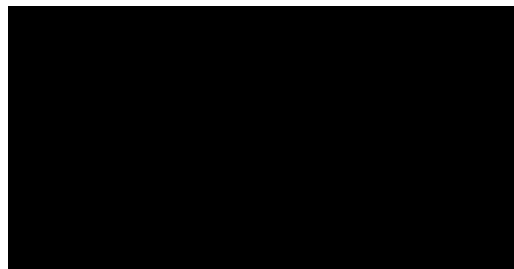
#### DEFINITIONS


In this Order, the following definitions apply:

Term	Definition
BC Act	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> .
The Department	The NSW Department of Planning and Environment.
LLS Act	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	The area located on the Property shown schematically on the map in Attachment 1 outlined in orange and marked 'Remediation Area' being part of [REDACTED]
Remediators	[REDACTED]
Reporting period	Reporting period means each annual period from the commencement of this Order.
Stock	Means all livestock, including but not limited to, cattle, horses, sheep, alpacas, pigs and goats. It does not include native animals.
Term	Means 15 years.
The Property	[REDACTED]
Weeds	Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> (NSW).

## **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 of 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.
- The Department of Planning and Environment 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 South East**  
**Department of Planning and Environment**  
(By delegation)

Contact officer: 

**Attachment:**

**1. Map of the Remediation Area**



Table 2: Location of vertices, Remediation Area mapped at Attachment 1

Vertices	Latitude	Longitude	Easting	Northing
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