

Remediation Order

ORDER ISSUED TO:

[REDACTED]

Reference: DOC22/182663
Date of issue: 31 August 2022
CCMS Case: 202002072

BY Registered post: RPP44 63900 05100 15613 85603; and
BY email: [REDACTED].

ORDER TO CARRY OUT REMEDIATION WORK UNDER SECTION 11.15 OF THE BIODIVERSITY CONSERVATION ACT 2016

Basis for issuing Remediation Order

The Department of Planning and Environment (**'the Department'**) is responsible for the enforcement of the *Biodiversity Conservation Act 2016* (**'BC Act'**), Part 5A of the *Local Land Services Act 2013* (**'LLS Act'**) as well as Regulations under each of these Acts.

[REDACTED] and [REDACTED] are the owner of [REDACTED] within the [REDACTED] Local Government Area (**'the Property'**).

Table 1 lists relevant land parcels within the property (the **Areas of interest** mapped at **Attachment A**).

Table 1: Land parcels

Lot	Deposited Plan
[REDACTED]	[REDACTED]

Information and evidence obtained to date, including an assessment of aerial imagery and a site inspection supports that **harm**, caused by **picking** approximately 0.8 ha hectares of native vegetation) occurred on the Property between September 2020 and October 2020.

Section 1.6 of the BC Act defines '*harm*' by means of '*picking a plant*'. To '*pick*' a plant means: '*gather, take, cut, remove from the ground, destroy, poison, crush or injure the plant or any part of the plant*'. It is an offence against section 2.2 of the BC Act to pick a plant.

At all material times, it was an offence against section 2.2 of the BC Act for a person to carry out or authorise picking of a plant. As there does not appear to be any appropriate defence in place to permit this clearing to occur, we determine there has been an offence.

Opinion

I, [REDACTED], Senior Team Leader, South East Compliance and Regulation (STL SECR), am satisfied that native vegetation has been damaged in or as a result of the harm to the biodiversity and environmental asset.

Order

Pursuant to section 11.15 of the BC Act and under delegation from the Environment Agency Head I, [REDACTED] STL SECR order [REDACTED] and [REDACTED] ('the **Remediator**') to carry out the following remediation work for the duration specified.

Requirements

1. Remediation Areas

- 1.1. In this Order, **Remediation Area** means the areas marked "Remediation Area" on **Attachment B**.
- 1.2. This Order requires the Remediator to inform the Environment Agency Head of any change in the ownership or occupancy of the land concerned at least 21 days prior to any such change occurring.

2. Commencement date

- 2.1. This order will commence immediately from the date of issue.

3. Duration

- 3.1. This Order will be in force for fifteen (15) years from the date of issue; unless varied or revoked in accordance with the BC Act.

4. Remediation work

Soil disturbance

- 4.1. Soil disturbance in the Remediation Areas is prohibited, except in accordance with this Order or with written approval from the Department.

Remediation

- 4.2. By 28 February 2023, rehabilitate the area where fill was imported. Efforts to restore the profile of the landform must be reinstated to its previous natural status and elevation. **No work is permitted to occur until s 4.2.3 has been completed**. All works below must be monitored by a Departmental staff member. Efforts of restoration include:
 - 4.2.1. engage a suitably qualified environmental person to determine the most effective method in terms of minimisation of environmental impact;
 - 4.2.2. install temporary erosion and sediment control downslope of the area where fill was imported (an environmental outcome is to prevent pollution of waters);
 - 4.2.3. classify all fill in accordance with the [EPA's Waste Classification Guidelines](#);
 - 4.2.4. remove fill down to the previous natural elevation of the landform;
 - 4.2.5. if using an excavator, mechanical works must be undertaken by a qualified operator;
 - 4.2.6. if using an excavator, minimise compaction by wheels or tracks as far as practicable;
 - 4.2.7. you must not remove so much fill as to dig deeper than the previous natural elevation of the landform (an environmental outcome is to prevent handling potential acid sulfate soils);
 - 4.2.8. if fill is virgin excavated natural material or excavated natural material it may be reused on site in accordance with section 4.3.1;

- 4.2.9. dispose of the fill at a facility that is lawfully able to receive it (an environmental outcome is the lawful disposal of fill);
- 4.2.10. after fill is removed down to the previous natural elevation of the land, place open weave jute mesh (or similar) over the area to allow for seed establishment. This may be laid in strips over at least one quarter of the area.
- 4.3. By 28 February 2023, rehabilitate the areas where the trenches were dug. Efforts to restore the profile of the landform must be reinstated to its previous natural status and elevation. Efforts of restoration include **either** method in s. 4.3.1 **or** s. 4.3.2 through 4.3.5:
- 4.3.1. if fill is virgin excavated natural material or excavated natural material (as determined by section 4.2.3), soil may be used to restore the areas where the trenches were dug;
- or** if fill is not virgin excavated natural material or excavated natural material (as determined by section 4.2.3), the remediator must:
- 4.3.2. lay ecologs on top of the trench which was cut through the land;
- 4.3.3. each ecolog should be spaced out with a distance of approximately 5 meters between each ecolog;
- 4.3.4. each ecolog can be anchored with star pickets or light wooden stakes which may gently be placed into the landform to hold the ecolog in place;
- 4.3.5. do not alter the landform by removing or adding anything except in accordance with this Order or with written approval from the Department;
- 4.3.6. this approach may be undertaken in a staged manner but only with the written approval from the Department.
- 4.4. Native vegetation is to be allowed to regenerate in the Remediation Area as the priority method of remediation. To protect regenerating vegetation and fauna habitat; the following activities are **prohibited** within the Remediation Area:
- Alteration of the profile of the land (by any means) except in accordance with this Order or with written approval from the Department;
 - Heavy machinery or any vehicle use except in accordance with this Order or with written approval from the Department;
 - Replanting of exotic flora species;
 - Clearing of native vegetation;
 - Stock grazing;
 - Water extraction;
 - Removal of fallen timber;
 - Cultivation;
 - Construction of infrastructure beyond the erection of the fence as in clause 4.10; and/or
 - Aerial spraying.

Weed management

- 4.5. The Remediators must implement measures to ensure **exotic flora** do not have a significant impact on the **biodiversity values** of the Remediation Areas.
- 4.6. Without limiting this clause, the Remediators must ensure that exotic flora occupy less than 5% of total groundcover of the Remediation Areas. Control measures permitted include:
- Manual removal;

- Natural control.

Pest animals

4.7. The Remediators must implement measures to reduce the density of **exotic animals** to a level that is not having a significant impact on the biodiversity values of the Remediation Areas; and maintain densities at or below that level using any approved means.

Livestock

- 4.8. Livestock must be excluded from the remediation area as of the date of this order being issued.
- 4.9. No livestock is permitted to enter the remediation area for any purpose.

Water extraction

4.10. No water is to be extracted from the remediation area.

Fencing

- 4.11. By 01 June 2023, for the purpose of rehabilitating and restoring the landform, a fence must be erected around the landform.
- 4.11.1. the fence must be established with an offset a distance of 2 meters from the visible edge of the landform;
 - 4.11.2. the fence must be of a standard that excludes all stock from entering it;
 - 4.11.3. the fence must encompass the entire remediation area and meet fences at the start and end point of the fence; and
 - 4.11.4. the fence must be constructed without any machinery entering the remediation area at any point;
 - 4.11.5. The fence must be constructed as follows:
 - 4.11.5.1. Five strand wire of 8 gauge size;
 - 4.11.5.2. The highest and lowest strands must be constructed of plain wire (not barbed, or similar material);
 - 4.11.5.3. The middle three strands must be barbed wire;
 - 4.11.5.4. The bottom strand is to be no less than 20 centimetres above ground level;
 - 4.11.5.5. 10 posts must be installed every 30-meters; and
 - 4.11.5.6. Any gates in the fence must be constructed of steel with self-closing locks.
- 4.12. Fences are to be maintained to ensure the total exclusion of stock from the Remediation Areas.
- 4.13. The Remediators must erect signage so that any person entering the Remediation Areas is aware; and does not use the land in a manner that would contradict this Order.

Access

- 4.14. The Remediators must provide reasonable access to staff of the Department for the purposes of administering this Order.
- 4.15. The Department must provide reasonable notice of an intention to inspect the Remediation Areas.

Hazards, chemicals and waste

- 4.16. The use of insecticides, herbicides and soil ameliorants is not permitted on the Remediation Areas except as approved in writing by the Department.
- 4.17. Waste is not to be placed, stored or kept in the Remediation Areas.
- 4.18. All staff, contractors and other visitors entering the Remediation Areas are to be made aware of this Order and instructed to comply with its requirements.

Costs

- 4.19. It is understood that Local Land Services may be able to assist with the cost of fencing after 30 June 2022.
- 4.20. The Remediators must bear all costs associated with implementing the conditions of this Order excepting the potential cost assistance regarding the erection of the fence, as mentioned in section 4.10.

5. Inspections and records

Inspections

- 5.1. The Remediators must inspect the Remediation Areas twice each year, with a minimum of 150 days between each inspection for the purposes of determining the percentage of ground cover that is comprised of **exotic flora** and priority weeds.
- 5.2. In the Remediation Areas, there are two monitoring points located at the GPS co-ordinates given in **Table 2** and mapped at **Attachment B**. The co-ordinates given must be permanently marked to ensure the location is the same each monitoring period.

Table 2: Location of monitoring points

Monitoring Point	Latitude	Longitude	Easting	Northing
Monitoring Point 1	██████████	██████████	██████	██████
Monitoring Point 2	██████████	██████████	██████	██████

Records

- 5.3. The following records must be made by the Remediator for all inspections:
- The date(s) on which the inspection was undertaken
 - The name of the person who undertook the inspection
 - Photographs to the north, east, south and west at each monitoring point
 - Observations made during the inspection including:
 - Percentage of ground cover comprised of weeds
 - Presence or absence of pest animals in the Remediation Areas
 - Risk of fire within the Remediation Areas.
 - Details of any remediation work required within the Remediation Areas, including condition targets
 - The proposed date(s) of that work and time frames for completion.
- 5.4. All records required to be kept by this Order must be:
- Accurate
 - In a legible form

- Kept for the duration of this Order
- Provided to the Department annually (as part of the annual monitoring report).

6. Reporting

Initial works report

6.1. The Remediators must prepare and submit an Initial Works Report to the Department within **six weeks of the date of issue** of this Order. This report must contain:

- Confirmation of the exclusion of stock and dates of any actions taken to remove stock.
- The percentage of ground cover that is comprised of exotic flora.
- An assessment of pest animal presence within the Remediation Areas.
- Advice of any completed, required, or proposed work within the Remediation Areas.
- Copies of all invoices and/or receipts for transportation and disposal of fill.

Annual monitoring report

6.2. A Monitoring Report must be submitted to the Department annually whilst this Remediation Order is in force. The initial report is due six (6) weeks from the date of issue and annually thereafter. Monitoring Reports must contain the records made for all inspections (see section 5).

6.3. Reports may be submitted to the Department by:

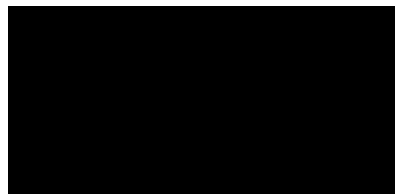
- Mail, courier, or hand to:
Compliance and Regulation
Biodiversity and Conservation South East
Level 3, Block D, 84 Crown Street
P.O. Box 514
Wollongong NSW 2580

OR

- Email to:

ROG.south@environment.nsw.gov.au

Marked to the attention of "Compliance and Regulation"



Senior Team Leader
South East Compliance and Regulation
Biodiversity and Conservation Division
(by Delegation)

Definitions

In this Order, the following definitions apply:

Term	Definition
Areas of interest	Areas where native vegetation has been cleared
BC Act	<i>Biodiversity Conservation Act 2016</i>
Clearing	Has the same meaning as defined in section 60C of the <i>Local Land Services Act</i>
Damage	Damage has the same meaning as defined in section 11.14 of the <i>Biodiversity Conservation Act 2016</i>
Ecolog	Contact Local Land Services officer [REDACTED] to advise.
Excavated natural material	Excavated Natural Material (ENM) is naturally occurring rock and soil (including materials such as sandstone, shale, clay and soil) that has been excavated from the ground, or, contains at least 98 per cent (by weight) natural material, or, does not meet the definition of Virgin Excavated Natural Material (VENM). ENM does not include material that has been processed or contains acid sulphate soils or potential acid sulphate soils.
Exotic animals	Includes feral cats, wild dogs, feral pigs, feral goats, feral deer, foxes, hares, rabbits, and other exotic animal species but does not include livestock or native wildlife
Exotic flora	Plant species that are not "native vegetation" as defined in section 6 of the <i>Native Vegetation Act 2003</i>
Landform	The landform referred to in this remediation order has been mapped as a coastal saltmarsh by Elgin Consulting.
Native vegetation	Has the same meaning as defined in the <i>Local Land Services Act 2013</i> .
Natural control	Refers to any process which may occur naturally, without the aid or assistance of humans
Order	This document – a Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i>
Pick	Has the same meaning as defined in section 1.6 of the <i>Biodiversity Conservation Act 2016</i>
PCT	Plant Community Type
Remediation Areas	The areas located on the Property shown schematically on the map in Attachment B and marked "Remediation Areas"
Stock	Means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, domesticated pigs and domesticated goats); it does not include native wildlife
Threatened Ecological Community	Has the same meaning as defined in the <i>Biodiversity Conservation Act 2016</i>
Virgin Excavated Natural Material	natural material (such as clay, gravel, sand, soil or rock fines): (a) that has been excavated or quarried from areas that are not contaminated with manufactured chemicals, or with process residues, as a result of industrial, commercial, mining or agricultural activities and (b) that does not contain any sulfidic ores or soils or any other waste and includes excavated natural material that meets such criteria for virgin excavated natural material as may be approved for the time being pursuant to an EPA Gazettal notice.
Waste	Has the same meaning as defined in the <i>Protection of the Environment Operations Act 1997</i>

Information about this Order

Compliance: this order takes immediate effect from the date of issue. 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.

Failure to 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.

Alternatively, the Environment Agency Head (or Delegate) may authorise another person to carry out the work who may then recover the cost from you or any person may seek an order from the NSW Land and Environment Court requiring you to rectify the breach.

Appeal: 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>.

Variation: This order may be varied or revoked in the same manner in which it was given.

Attachments:

- A. Map of the 'Areas of interest'
- B. Maps of the 'Remediation Areas'

Attachment A: Areas of interest (AOI)



Legend

A legend box containing two symbols: a yellow outline representing the Area of Interest (AOI) and a black redaction box representing the redacted area.

Attachment A - Remediation Area

A large black rectangular redaction box covering the title and legend information.





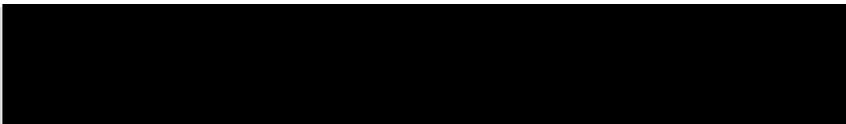

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0 0.03 0.06 0.09 0.12 km
Datum/Projection: GCS GDA 1994

The NSW Government logo, featuring a red stylized flower, and the text "NSW GOVERNMENT" and "Planning & Environment".

Attachment B: Remediation Areas



<p>Legend</p> <ul style="list-style-type: none"> Remediation Area  Monitoring Points	<p>Attachment B - Remediation Area</p> <p></p> <p><small>Copyright of Department of Planning Industry 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 the map and any consequences of such acts or omissions.</small></p>	<p>0 0.03 0.06 0.09 0.12 km Datum/Projection: GCS GDA 1994</p>  <p>Planning & Environment</p>
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