

Remediation Order

ORDER ISSUED TO:

██
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Reference: DOC23/777133
 Date of issue: 01 September 2023
 CCMS Case: 202102741

By email: ██
By Registered Post: RPP44 63900 05100 26867 97609

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

Background

- A. 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.
- B. Pursuant to section 11.15 of the BC Act, if the Environmental Agency Head of the Department of Planning and Environment is satisfied at 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 Environmental Agency Head may order a person to carry out specified remediation work in a specified manner within a specified time.
- C. The power to issue a remediation order under the BC Act may be exercised for the purposes of the BC Act or Part 5A of the LLS Act (section 11.2 of the BC Act).
- D. ██ holds the position of Senior Team Leader of Compliance and Regulation, Southeast within the Department of Planning and Environment.
- E. ██ holds the delegated authority on behalf of the Environmental Agency Head of the Department of Planning and Environment for the purposes of section 11.15 of the BC Act.
- F. ██ is the current land holder ██ (The Property) as listed in Table 1 below (the **Area of Interest** mapped in **Attachment A**).

Table 1: Land parcels

Lots	Deposited Plan
█	████████████████████

Basis for issuing Remediation Order

- G. The Property is designated as *Category 2 – Regulated Land* as per a Category Explanation Report obtained from the Map Review Team of the NSW Department of Planning and Environment.
- H. The Department of Planning and Environment is investigating a report of the unauthorised removal of native vegetation from rurally regulated land on the Property between April 2021 and September 2021.
- I. Under section 60N of the LLS Act it is an offence to clear native vegetation from rurally regulated land.
- J. Information and evidence obtained to date including site inspections, a review of statutory notices, a category explanation report from the Map Review Team of DPE, a spatial assessment and review of aerial imagery, indicates that damage occurred at the property to *Category 2 – Regulated Land* which comprised of native vegetation. Information and evidence obtained to date also indicates that damage occurred in or as a result of clearing of native vegetation from rurally regulated land contrary to section 60N of the LLS Act. Furthermore;
 - i. [REDACTED] instructed various parties including but not limited to [REDACTED] and [REDACTED] to undertake the removal of native vegetation.
 - ii. Native vegetation was cleared predominantly by using heavy machinery such as:
 - a. Excavator;
 - b. Bobcat;
 - c. Chainsaw; and
 - d. Additional utilisation of fire to ‘clear’.
 - iii. Vegetation at the property is of native composition (consistent with the definition of section 60B of the LLS Act) consisting of plant community type (**‘PCT’**): PCT 3267 – *Shoalhaven Foothills Turpentine Forest*.
 - iv. The property and locations where the offence occurred is defined as *Category 2 – Regulated Land* as per section 60D of the LLS Act. In addition, a *Category Explanation Report* provided by the Environment & Heritage Map Review Team supports that land is *Category 2 – Regulated land*.
- K. The works required by this remediation order provide for the maintenance, restoration and remediation of damaged areas.

Opinion

I, [REDACTED], Senior Team Leader, Southeast Compliance and Regulation (**‘STL SECR’**), am satisfied that native vegetation has been cleared resulting in damage to *Category 2 – Regulated Land*.

Order

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

The remediator may nominate a third party to undertake remedial works, but this person cannot be anyone associated with [REDACTED] or [REDACTED].

Requirements

1. Remediation Areas

- 1.1. In this Order, **Remediation Areas** means the areas marked “Remediation Areas” on **Attachment B**.
- 1.2. There are two different Remediation Areas as part of this order which have different conditions and requirements for remediation activities. These areas are referred to as ‘Remediation Area – Type A’ and ‘Remediation Area – Type B’.
- 1.3. 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.
- 1.4. Remediation Areas within this Order will be recategorised to *Category 2 – Sensitive Regulated Land* on the Native Vegetation Regulatory Map.

2. Duration

- 2.1. This Order will be in force for twelve (12) years from the date of issue; unless varied or revoked in accordance with the BC Act.

3. Remediation work

Soil disturbance

- 3.1. Soil disturbance in both Remediation Areas is prohibited, except in accordance with written approval from the Department.

Remediation

For the area titled ‘**Remediation Area – Type A**’ within Annexure B, the following must be completed:

- 3.2. **Within 7 days** of receiving this Order, and for the duration of this order, all stock must be excluded from the Remediation Area.
- 3.3. **Within 45 days** of receiving this Order:
 - 3.3.1. Engage a Biodiversity Assessment Method (**‘BAM’**) accredited assessor to prepare a Vegetation Management Plan (**‘VMP’**).
 - 3.3.2. A VMP will provide a detailed maintenance schedule, describe how vegetation will be remediated to 50% of the benchmark for PCT 3267 in Remediation Area – Type A, as well as:
 - 3.3.2.1. Any land management activities within the remediation area (Type A and B) will need to be proposed within the VMP. These propositions will be subsequently reviewed and either approved or denied by The Department.
 - 3.3.2.2. A strategy which will promote the regeneration and revegetation of ground, mid and upper storey species;
 - 3.3.2.3. A watering regime;
 - 3.3.2.4. A weed management regime;
 - 3.3.2.5. A plan to manage and replace any revegetation required after die-off;
 - 3.3.2.6. Any site-specific directions which will contribute to the success of revegetation at the property; and
 - 3.3.2.7. Refer to **Attachment C** which specifies the benchmark condition for PCT 3267 and defines what this Remediation Order considers 50% of this benchmark to be.

- 3.3.3. Within **14 days** of the VMP being issued to the Remediator, the Remediator will then provide a copy of this to The Department for review and approval.
- 3.3.4. The Remediator must procure native vegetation prescribed within the VMP **and** plant this native vegetation within the Remediation Area (**Annexure B**) to the specifications required by the VMP.
- 3.3.5. Native vegetation will be sourced locally (subject to availability) to reduce the risk of environmental shock and plant die-off; and
- 3.3.6. The VMP must be followed for the duration of this order.
- 3.4. **Within 45 days** of the VMP being approved by the Department, the Remediator must undertake weed management as per the VMP, using low impact methodology described in sections 3.13 and 3.14.
- 3.5. **At all times for the duration of this Order**, if regenerating native vegetation seedlings occur on either Remediation Area – Type A or Remediation Area – Type B, seedlings must not be removed and should be allowed to naturally succeed.

For the area titled '**Remediation Area – Type B**' within Annexure B, the following must be completed:

- 3.6. **Within 7 days** of receiving this Order and for the duration of this order, all stock must be excluded from the Remediation Area.
- 3.7. **Within 60 days of the issue date of this Order**, the Remediator should engage a Suitably Qualified and Experienced Arborist (Certificate III in Arboriculture, or higher) to:
 - 3.7.1. Conduct a site inspection and tree assessment of remaining standing vegetation within Remediation Area – Type B, as well as any other individual trees of concern to TTK South Coast Pty Ltd within *Category 2 – Rurally Regulated Land*; and
 - 3.7.2. Prepare a report to annex to this Remediation Order which will describe the status and proposed management plan of the assessed vegetation. The report will be prepared in a manner which will reduce the need to remove native vegetation but lawfully and reasonably reduce safety concerns. The report will include a Tree Register which will:
 - 3.7.2.1. map and label each tree with a name,
 - 3.7.2.2. measure the diameter at breast height in centimetres,
 - 3.7.2.3. estimate the height of the tree in meters,
 - 3.7.2.4. identify the species,
 - 3.7.2.5. describe any requirements and/or observations for this vegetation,
 - 3.7.2.6. provide photographs of trees of concern,
 - 3.7.2.7. limits the requirement to remove a tree totally and relies on height/risk management strategies as a preference to removal.
- 3.8. **Within 150 days of the issue date of this Order**, for Remediation Area – Type B, native groundcover and/or native pasture should be reinstated with species listed in Attachment C. This should be incorporated into the VMP.
- 3.9. **At all times for the duration of this Order**, if regenerating native vegetation seedlings occur on either Remediation Area – Type B, seedlings must be allowed to naturally succeed and not be cut.
- 3.10. **After native groundcover and pasture has been reinstated**, [REDACTED] are permitted to graze this with cattle and/or sheep, providing stockproof fencing

excludes Remediation Area – Type A. Grazing must meet the definition of ‘*sustainable grazing*’ as listed within the Local Land Services Act (2013).

- 3.11. **After native groundcover and pasture has been reinstated**, [REDACTED] may slash the native grasses within Remediation Area – Type B by low impact method.

Fencing

No fencing is prescribed for the Remediation Areas, however, should stock be introduced to the property beyond already fenced paddocks, fencing will be required.

- 3.12. For the purpose of excluding stock, any fence to be constructed must:

- 3.12.1. be of a standard that excludes all stock from entering or exiting it.
- 3.12.2. any gates in the fence must be constructed of steel with self-closing locks.
- 3.12.3. any maintenance or fence construction must occur from outside of the remediation area, without any machinery entering the remediation area at any point.
- 3.12.4. If a wire fence is to be constructed: a fence must be five (5) plain wire strands, or
- 3.12.5. If post and rail fence is to be constructed: a fence must have a minimum of three (3) rails.
- 3.12.6. The highest strand/rail must be a minimum of 1.2 meters above ground level.
- 3.12.7. Barbed/razor wire will not be used.

- 3.13. Fences are to be maintained to ensure the total exclusion of stock from Remediation Areas.

Prohibited activities

- 3.14. To protect regenerating vegetation and fauna habitat; the following activities are **prohibited** within the Remediation Areas (unless approved by the VMP or the Department as listed in clause 3.3.2.1):

- Clearing of native vegetation (except for the slashing of native grasses in Remediation Area – Type B as indicated in section 3.11);
- Heavy machinery (as defined below);
- Replanting of exotic species;
- Stock grazing;
- Cultivation, cropping, harvesting etc.;
- Construction of infrastructure; and/or
- Aerial spraying.

Weed management

- 3.15. The Remediators must implement measures to ensure **exotic flora** do not have a significant impact on the **biodiversity values** of the Remediation Areas.

- 3.16. 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;
- Spot spraying; or
- Natural control.

Pest animals

3.17. 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

3.18. No livestock is permitted to enter Remediation Area – Type A, for any purpose. Livestock is permitted to enter Remediation Area – Type B only after groundcover and native pasture has been reinstated and so long as it meets the definition of '*sustainable grazing*'.

Access

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

Hazards, chemicals and waste

- 3.21. The use of insecticides, herbicides and soil ameliorants is not permitted on the Remediation Areas except as approved in writing by the Department.
- 3.22. Waste is not to be placed, stored or kept in the Remediation Areas.
- 3.23. 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

3.24. The Remediators will bear all costs associated with implementing the conditions of this Order.

4. Inspections and records

Inspections

- 4.1. The Remediators must inspect the Remediation Areas **once each year**, with a minimum of 364 days between each inspection for the purposes of determining the percentage of ground cover that is comprised of **exotic flora** and priority weeds and to assess the success of the remedial strategies.
- 4.2. 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. These monitoring points must be inspected and reported on in each report.

Table 2: Location of monitoring points

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

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

Records

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

- Confirmation of stock exclusion;
- Details of VMP and professional who prepared such VMP, any version updates to the VMP;
- Receipts of native seed, tube stock, native vegetation and BAM accredited assessor invoices;
- 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 priority 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.

4.4. 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 by 30 November for each year the order is in force.

5. Reporting

Initial works report

5.1. The Remediators must prepare and submit an Initial Works Report to the Department within **150 days of the date of issue** of this Order. This report must contain:

- Confirmation of the engagement of an ecologist to prepare a VMP and their contact details;
- Provision of the VMP which the above expert has prepared;
- Confirmation of stock exclusion from Remediation Area – Type A;
- All records contained above in section 4.3, to the standard outlined in section 4.4;
- An assessment of pest animal presence within the Remediation Areas;
- The percentage of ground cover that is comprised of exotic flora and priority weeds; and
- Advice of any completed, required, or proposed work within the Remediation Areas.

Annual monitoring report

5.2. An Annual Monitoring Report must be submitted to the Department annually whilst this Remediation Order is in force. The Department propose the Annual Monitoring Reports are submitted within the month of November of each year. Annual Monitoring Reports must contain the records made for all inspections (see section 4.3).

5.3. Reports will 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

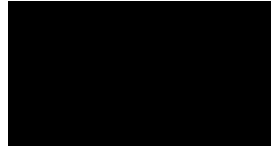
P.O. Box 514
Wollongong NSW 2580

OR

- Email to:

ROG.south@environment.nsw.gov.au

Marked "Attention: Compliance and Regulation RE: CCMS: 202103741"



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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
BAM	Biodiversity Assessment Method
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>
Duration	The length of time that the Remediation Order is active for.
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 which are not native to New South Wales
Heavy machinery	Includes excavator, mulcher, bobcat or bulldozer.
LLS Act	<i>Local Land Services Act 2013</i>
Low Impact Method	Low impact method of slashing as discussed in section 3.11 includes a whipper-shipper or a mower/slasher, but excludes heavy machinery as listed in this definitions table.
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>
Remediation Areas	The areas located on the Property shown schematically on the map in Attachment B and marked “Remediation Areas”
The Property	[REDACTED]
The Remediator	[REDACTED]
Stock	Means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, domesticated pigs and domesticated goats); it does not include native wildlife
Sustainable grazing	Schedule 5A Section 25 Sustainable Grazing (1) defines Sustainable grazing as: <i>Clearing</i> of native vegetation during the course of sustainable grazing. As well as: <i>Sustainable grazing is grazing by livestock, and the management of grasslands used for grazing, that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation. Management of grasslands includes (without limitation) the over-sowing or fertilisation of grasslands.</i> Local Land Services can assist with a sustainable grazing regime.
VMP	Vegetation Management Plan
Weed	Refers to any weed identified within the vegetation management plan as well as any Priority Weed described within the <i>Biosecurity Act (2015)</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.


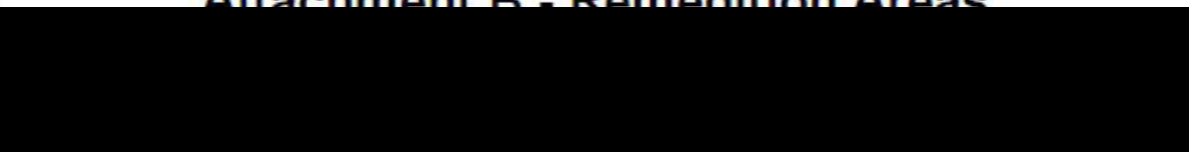


Appeal: Section 11.23(1) of the BC Act allows for a person given a remediation order to appeal against the giving of the Order (or any terms of the Order) to the NSW Land and Environment Court within 30 days of the service of the Order. However, even if an appeal is lodged, you must comply with this 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';
- C. Vegetation Class Benchmarks – PCT 3267; and
- D. Native Grass Species for 'Remediation Area – Type B'.



<h3>Legend</h3> <p> Boundary</p>	<h3>Attachment B - Remediation Areas</h3> <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</p>   Planning & Environment
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Attachment B: Remediation Areas



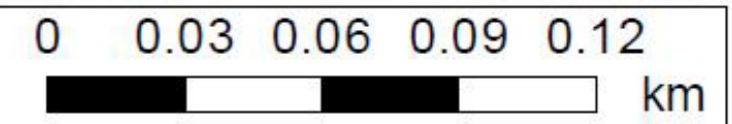
Legend

-  Monitoring Points
-  Remediation Area - Type A
-  Remediation Area - Type B
-  Boundary

Attachment B - Remediation Areas



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Attachment C - VEGETATION CLASS BENCHMARKS

Table 1: Benchmark condition for the Southern Lowland Wet Sclerophyll Forests vegetation class of the Sydney Basin IBRA region.

Benchmark attribute	Benchmark value	50% benchmark required by RO	Unit of measure
Tree Richness	8	4	The number of native tree species within a plot of area 0.1 ha
Shrub Richness	16	8	The number of native shrub species within a plot of area 0.1 ha
Grass and Grass-like Richness	9	5*	The number of native grass and grass-like species within a plot of area 0.1 ha
Forb Richness	11	5*	The number of native forb species within a plot of area 0.1 ha
Fern Richness	2	1	The number of native fern species within a plot of area 0.1 ha
Other Richness	9	5*	The number of native species within the other growth form group within a plot of area 0.1 ha
Tree Cover	70.0	35.0	The total foliage cover of native tree species within a plot of area 0.1 ha
Shrub Cover	29.0	14.5	The total foliage cover of native shrub species within a plot of area 0.1 ha
Grass and Grass-like Cover	28.0	14.0	The total foliage cover of native grass and grass-like species within a plot of area 0.1 ha
Forb Cover	5.0	2.5	The total foliage cover of native forb species within a plot of area 0.1 ha
Fern Cover	3.0	1.75	The total foliage cover of native fern species within a plot of area 0.1 ha
Other Cover	9.0	4.5	The total foliage cover of native species within the other growth form group within a plot of area 0.1 ha
Total Length Fallen Logs	87	43.5	The length of fallen logs within a plot of area 0.1 ha
Litter Cover	70	35	The % cover of litter is assessed as the average percentage ground cover of litter recorded from five 1m x 1m plots evenly located along a transect that bisects the 0.1 ha plot

*Rounding of whole values has occurred, in some instances up, in other instances down.

Attachment D – Native Grass Species for ‘Remediation Area – Type B’

Primary species for regeneration:

- *Microlaena stipoides* (Weeping grass)
- *Themeda triandra* (Kangaroo grass)
- *Entolasia marginata* (Bordered panic grass)
- *Entolasia stricta* (Wiry Panic)
- *Panicum bisulcatum* (Black seeded panic)
- *Paspalidium distans* (spreading panic grass - not to be confused with paspalum species)
- *Eragrostis leptostachya* (Paddock lovegrass)
- *Aristida Benthamii* (Benthams wire grass)
- *Aristida Warburgii* (Fine leafed wire grass)
- *Echinopogon ovatus* (Hedgehog grass)
- *Poa labillardierei* var. *labillardierei* (Common tussock grass)
- *Echinopogon caespitosus* (Bushy hedgehog grass)

Secondary species which may be successful (lesser likelihood)

- *Anthosachne scabra* – formerly *elmus scaber* – (Common wheat grass)
- *Hemarthria uncinata* (Mat grass)
- *Bothriochloa decipiens* or *macra* (Red grass)
- *Digitaria Parviflora* (Small flowered finger grass – native digitaria)
- *Digitaria ramularis* (Reflexed finger grass)
- *Chloris truncate* (Windmill grass)
- *Chloris venbtriosa* (Tall windmill grass)
- *Panicum decompositum* (Native millet)
- *Panicum effusum* (Hairy panic)