



**ORDER ISSUED TO:**

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

Order Number: DOC23/78889

CCMS Case Ref. No.: 202103016

Issue Date: 27 April 2023

Property: [REDACTED]  
[REDACTED]

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

**BY email:** [REDACTED] and [REDACTED]

**BY registered post:** [REDACTED]

**Date of issue: 27/04/2023**

**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 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 our 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>.



# Remediation Order

## 1. DEPARTMENT OF PLANNING AND ENVIRONMENT OBSERVATIONS

The Department investigated a report of the removal of native vegetation on the Property between April and May 2020 within the northern forested area and again between April and December 2021 along the [REDACTED]. It is an offence to clear native vegetation in a regulated rural area contrary to section 60N of the LLS Act.

A category explanation report was provided by the DPE Map Review Team, confirming that land is *Category 2 – Regulated Land* and *Category 2- Vulnerable Regulated Land*.

Information and evidence obtained, including site inspections, spatial assessments; including a review of aerial imagery, a category explanation report from the Map Review Team of DPE, and the issuance of statutory notices all indicate that damage occurred at the property to *Category 2 - Regulated Land* and *Category 2 – Vulnerable Regulated Land* at the Property between April – May 2020 and again between April – December 2021. An excavator was used to remove native understorey and groundcover from the woodland to the north, and, included removing native vegetation from protected biodiverse riparian areas. Information and evidence obtained also indicates that the damage occurred in, or as a result of clearing of, native vegetation contrary to section 60N of the LLS Act

Available defences listed in Part 5A LLS Act and associated regulations were considered and it was concluded that they did not apply and that an offence occurred.

Furthermore, evidence to hand confirms that [REDACTED] and [REDACTED] instructed various contractors to clear native vegetation. As per s13.29 of the BC Act, at all times a landholder is responsible for activities carried out on the land.

## 2. REASONS FOR VIEW FORMED

I, [REDACTED], Director of South East Branch, am satisfied that the following has been damaged:

- a) native vegetation on category 2-regulated land under Part 5A of the LLS Act, namely, approximately 2.5 ha of native vegetation, from areas within the northern woodland and along [REDACTED] (**Annexure B**)

in or as a result of, the commission of an offence against section 60N of the Part 5A of the LLS Act or the regulations under that Part.

In order to:

- a) maintain, remediate, or restore the damaged area, habitat, plant, animal or vegetation concerned;

I, [REDACTED], Director of South East Branch, order [REDACTED] and [REDACTED] 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 twelve (12) years from the date of this Order:

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



# Remediation Order

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

In this Order, 'Remediation Area' means the areas identified in Attachment B.

The Remediator is either yourself and/or a person or persons authorised to act on your behalf.

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

### 3.1 General Requirements

- 3.1.1 **IMMEDIATELY** from the date of issue of this Order, you must not undertake or allow any human disturbances to the Remediation Area, there must be no use of machinery or vehicles which would impact groundcover, or, of any mowers, slashers, whipper snippers, or the like, which will impact vegetation.
- 3.1.2 **IMMEDIATELY** from the date of issue for this Order, you must not undertake or allow any sowing, distribution, or application of grass seeds in the Remediation Areas.
- 3.1.3 **IMMEDIATELY** from the date of issue of this Order, you must not undertake or allow any modification, removal, or alteration of native vegetation from the Remediation Areas.
- 3.1.4 **By 14/07/2023** all stock must be removed from the Remediation Area, and must be prevented from entering the remediation area.
- 3.1.5 Until such time as young eucalypts are present throughout the remediation area, the Remediator will prune branches of various native eucalypt species **once per year when existing native trees are fruiting**: and lay these cuttings within the Remediation Area, upon [REDACTED], along [REDACTED] to encourage natural vegetation recruitment and regeneration.
  - 3.1.5.1 Branchlets will be no more than 1 meter in length, and no less than 30 centimetres in length;
  - 3.1.5.2 Branchlets should be placed intermittently along the length of [REDACTED], no further than 15 meters apart and in locations where there are no canopy trees;
  - 3.1.5.3 Branchlets should be placed from alongside the river's edge, to a distance of 22.5 meters (maximum) away from the bank of [REDACTED];
  - 3.1.5.4 The branchlets must be sourced from the property;
  - 3.1.5.5 Branchlets will not be cut from a threatened species;
  - 3.1.5.6 A series of photographs and/or a video with a timestamp should be obtained at the time branchlets are laid down to verify section 3.1.5 has been complied with; for the inclusion in the annual monitoring report;
  - 3.1.5.7 The Department can provide further advice on implementing this condition on site; and
  - 3.1.5.8 For the sake of clarity, this activity is not required within the Remediation Area located on [REDACTED] on [REDACTED].
- 3.1.6 **By 14/07/2023** the Remediator 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.
- 3.1.7 The Remediator must inform all purchasers of the land of this Order.
- 3.1.8 The Remediator must notify the Environmental Agency Head within 14 days if you intend on selling the land subject to this Order.



# Remediation Order

## 3.2 Reporting Requirements

- 3.2.1 The Remediator must submit a completed Annual Monitoring Report (Appendix C). You must submit a completed report by 30 November every year for the duration of the Order. All reports must be scanned and emailed to [rog.south@environment.nsw.gov.au](mailto:rog.south@environment.nsw.gov.au) or sent by Registered Post to:

Reference: CCMS 202103016  
 Senior Team Leader, Compliance and Regulation (South East)  
 Department of Planning and Environment  
 PO Box 514  
 Wollongong NSW 2520

### Annual monitoring report and record keeping:

The following records must be made by the Remediators for all inspections:

- Annual monitoring may be completed by the landholder(s) or a representative.
- The date(s) on which the inspection was undertaken.
- The name of the person who undertook the inspection
- 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
- Remediation work required; including condition targets and time frames for completion.
- Details of any work required within the Remediation Areas.
- The proposed date(s) of that work.
- Photographs to the north, east, south, and west at each monitoring point located within Table 1 and Attachment B.
- The annual monitoring report and photographs will be used to monitor progress of remediation at the property. As the Department has the right to amend, vary or revoke an order, monitoring reports will provide an opportunity to measure whether changes are required.

**Table 1: Location of monitoring points**

Monitoring Point	Latitude	Longitude	Easting	Northing
Monitoring Point 1	████████	████████	████████	████████
Monitoring Point 2	████████	████████	████████	████████
Monitoring Point 3	████████	████████	████████	████████

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

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

- Accurate
- In a legible form
- Kept for the duration of this Order
- Must be provided to the Department annually.





# Remediation Order

## 4. AN EXAMPLE OF HOW YOU CAN COMPLY

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

1. Construct and maintain a stock proof fence around the boundary of the remediation area by 14/07/2023.
2. Remove all stock from the remediation area by 14/07/2023.
3. Controlling weeds by selectively poisoning and manually removing weeds 4 times per year. This should be by low impact method such as hand removal, or spot spraying with a handheld pump and nozzle. The broadscale application of herbicides/sprays may indiscriminately 'clear' surrounding native vegetation and is therefore prohibited.
4. Prevent human disturbances to the remediation area for the duration of the Order, with the exception of work required for the management of weeds.
5. Send in completed annual monitoring report and attachments by 30<sup>th</sup> November, one for every year for the Term of the Order.

## 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>
The Department	The NSW Department of Planning 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] and [REDACTED].
Remediators	[REDACTED]
Reporting period	Reporting period Means each annual period from the commencement of this Order
Term	Means twelve (12) years
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

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## 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.
- 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.

[Redacted signature block] .....

[Redacted name]

Director of South East Branch  
Biodiversity Conservation Division  
(by Delegation)

### Attachment:

1. Map of The Property
2. Map of the Remediation Area





Attachment 1  
Map of the Remediation Area  
Biodiversity Conservation Act  
2016  
s11.15 Remediation Order

Property Owner: [REDACTED]

Address: [REDACTED]

Lot/DP: [REDACTED]

County: [REDACTED]

Parish: [REDACTED]

LGA: [REDACTED]

Area: 3.6 ha, 35712.2 square m

Legend

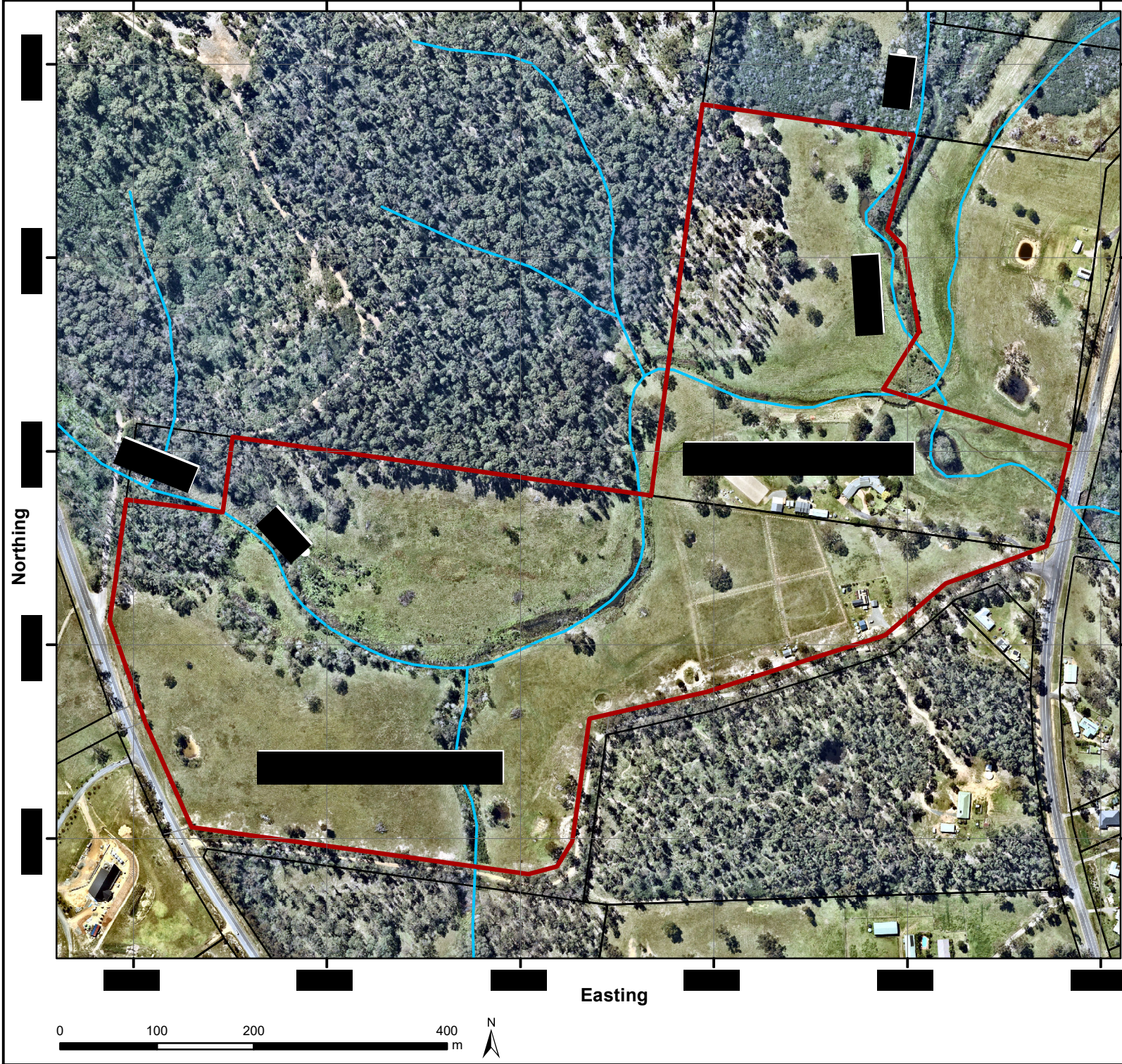
- The Property
- Lot / Deposited Plan (DP)
- Watercourse

Base satellite imagery captured on 10.03.2023 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 Land and Property Information NSW.

Map Datum/Projection: GDA94 MGA Zone 56  
Date: 14 April 2023  
Plan No: S11.15\_202103016\_V1







Attachment 2  
Map of the Remediation Area  
Biodiversity Conservation Act  
2016  
s11.15 Remediation Order

Property Owner: [Redacted]

Address: [Redacted]

Lot/DP: [Redacted]






County: [Redacted]

Parish: [Redacted]

LGA: [Redacted]

Area: 3.6 ha, 35712.2 square m

Legend

-  Monitoring point
-  Remediation Area
-  The Property
-  Lot / Deposited Plan (DP)
-  Watercourse

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