

Remediation Order

ORDER ISSUED TO:

[REDACTED]

Order Number: 202304789-1

Case Reference Number: 202304789

Issue Date: 15/05/2024

Property:

[REDACTED]

By: Registered Post.

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

Who are we: The Department of Climate Change, Energy, the Environment and Water (**the Department**) 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**) 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 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

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information on appeals can be found on the NSW Land and Environment Court website <http://www.lec.justice.nsw.gov.au>.

BACKGROUND

- A. [REDACTED] holds the position of Senior Team Leader Compliance and Regulation, South West Branch, Biodiversity and Conservation Division within the Department.
- B. [REDACTED] holds delegated authority on behalf of the Agency Head of the Department for the purposes of section 11.15 of the BC Act.
- C. [REDACTED] is the sole tenant and owner on title (**Landholder**) of the of land parcel; [REDACTED] which form part of the landholding [REDACTED] (**the Property**) upon which the clearing of native vegetation contrary to section 60N of the LLS Act occurred.

BASIS FOR ISSUING REMEDIATION ORDER

- D. The Department investigated an allegation relating to the unauthorised clearing of native vegetation in a regulated rural area on the Property in March 2023.
- E. Under section 60N of the LLS Act, it is an offence to clear native vegetation in a regulated rural area.
- F. The Department's investigation confirmed the clearing of approximately 5.27ha of remnant (present prior to 1990) native vegetation in a regulated rural area occurred on [REDACTED] of the Property in March 2023. The clearing was conducted contrary to section 60N of the LLS Act, and none of the available defences listed in the LLS Act and associated Regulations apply.
- G. The native vegetation cleared contrary to section 60N of the LLS Act Property was located on land categorised on the draft Native Vegetation Regulatory (**NVR**) Map, as Cat-2 Regulated Land and zoned RU1 Primary Production.
- H. The works required by this Order provide for the remediation of damage sustained to the environment by clearing remnant native vegetation contrary to section 60N of the LLS Act.
- I. In response to the offence the Department issued [REDACTED], a Penalty Notice for clearing native vegetation in a regulated rural area (individual) on the 25/08/2023.
- J. Section 11.16(2) of the BC Act requires you to carry out the remediation work required by this Order.

OPINION

- K. I, [REDACTED] Senior Team Leader Compliance and Regulation, South West Branch, Biodiversity and Conservation Division, am satisfied that native vegetation has been damaged in or as a result of the commission of an offence against section 60N of the LLS Act.

ORDER TO CARRY OUT REMEDIATION WORK

- L. In order to mitigate the damage to the PVP Offset Area:

I, [REDACTED], Senior Team Leader Compliance and Regulation, South West Branch, Biodiversity and Conservation Division, order [REDACTED] (**the Remediator**)

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to carry out the following remediation work on the Property **for a period of twenty-five (25) years** from the date the Remediation Plan associated with this Order is approved in writing by the Department (**the Term**).

1 REMEDIATION AREA

- 1.1 In this Order, Remediation Area means the areas identified for remediation on the map at Attachment-1 of this Order.
- 1.2 The Remediation Area is located within [REDACTED] of the Landholding [REDACTED]
- 1.3 **The size of the Remediation Area is 10.9ha.**
- 1.4 A Code Assessment has been carried out to determine the size of the Remediation Area. If the Landholder had obtained authorisation under the LLS Act to clear the native vegetation that had been cleared without authorisation, the Landholder would have required a total set-aside of 31.62ha in perpetuity.
- 1.5 The Remediation Area will require the planting/seeding of native vegetation species from the Plant Community Type (**PCT**) of that area.

2 REQUIREMENTS

- 2.1 Within six (6) weeks of the issue date of this Order the Remediator **must** engage the services of a suitably qualified person to be endorsed by the Department in writing to prepare a Remediation Plan. The Remediator **must** provide the Department with the suitably qualified persons full name, company name (if relevant), ABN or ACN, and an overview of individuals qualifications and experience relevant to environmental rehabilitation work or projects.
- 2.2 Within eight (8) weeks of receiving written notification from the Department that the suitably qualified person has been endorsed by the Department, the Remediator **must** provide the Department with a copy of a Remediation Plan prepared by the suitably qualified person for review and consideration by the Department.
- 2.3 The Remediation Plan is subject to the approval of the Department. **No works are to commence until the Remediation Plan submitted by the Remediator has been approved in writing by the Department.**
- 2.4 The Remediation Plan **must** demonstrate how the Remediator will rehabilitate and restore the Remediation Area.
- 2.5 The Remediation Plan **must** ensure any supplementary planting or seeding is consistent with the associated PCT.
- 2.6 The Remediation Plan **must** include restoration benchmarks (minimum stem density) that correlate with the associated PCT.
- 2.7 The Remediation Plan **must** include measures to effectively manage weeds, exotic species, non-native plants, and commercial crops within the Remediation Area for the Term of the Order in accordance with NSW Department of Primary Industries (**DPI**) [Best Practice Management Guides](#). Only selective methods (non-mechanised) of poisoning and/or manual removal are to be used.
- 2.8 The Remediation Plan **must** include measures to effectively and humanely manage pest herbivore species within the Remediation Area for the Term of the Order in accordance with NSW DPI [NSW Codes of Practice and Standard Operating Procedures for the effective and humane management of pest animals](#).

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- 2.9 Within four (4) weeks of the Department's approval in writing of the Remediation Plan, the Remediator **must** remove all rubbish and disused farm materials and debris such as old metal, plastic and building materials within the Remediation Area.
- 2.10 Within four (4) weeks of the Department's approval in writing of the Remediation Plan, the Remediator **must** remove all stock from within the Remediation Area. Stock is not permitted within the Remediation Area for the Term of the Order.
- 2.11 Within four (4) weeks of the Department's approval in writing of the Remediation Plan, the Remediators **must** construct a fence (including access gates) around the perimeter of the Remediation Area to prevent access to the Remediation Area by stock. All fences and gates around the perimeter of the Remediation Area **must** be maintained and kept in good working order for the Term of the Order.
- 2.12 Within 4 weeks of the issue date of this Order 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.
- 2.13 The Remediator **must** abate human disturbances to the Remediation Area for the Term of the Order.
- 2.14 No dams, levy banks, drainage lines, sheds or other rural infrastructure are to be constructed within the Remediation Area during the Term of the Order unless pre-approved in writing by the Department.
- 2.15 The following activities are **prohibited** within the Remediation Area unless pre-approved in writing by the Department:
- Soil disturbance (including cultivation),
 - Clearing of any native vegetation,
 - Stock Grazing,
 - Removal of fallen timber,
 - Aerial or boom spraying, and
 - Storage of waste, rubbish, machinery, or surplus farming materials.
- 2.16 The Remediator **must** notify the Department as soon as practicable and in any event within fourteen (14) days of becoming aware of any incident, event or activity that causes an adverse impact on the Remediation Area or adversely affects the health of the Remediation Area. This may include:
- a) fire,
 - b) flood, or
 - c) any other incident, event or activity that may adversely impact or affect the health of the Remediation Area
- 2.17 The Remediator is responsible for all costs associated with implementing and complying with the conditions of this Order.
- 2.18 The approved Remediation Plan **must** be implemented by the Remediators for the Term of the Order and will become Annexure-1 to this Order.
- 2.19 The Order and associated Remediation Plan will remain in force for the Term of the Order unless, amended, revoked, or varied by the Department.
- 2.20 The Remediator **must** provide reasonable access to staff of the Department for the purposes of administering this Order which includes providing access to inspect the Remediation Area as required.

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3 MONITORING AND REPORTING

- 3.1 The Remediator **must** notify the Department when the initial works associated with the Order have been completed. The Remediator **must** complete and submit the Initial Works Declaration (IWD) provided by the Department at Attachment-2 of this Order. The Remediator **must** submit the IWD to the Team Leader Compliance and Regulation – South West within ten (10) weeks from the date of issue of this Order.
- 3.2 The Remediator **must** inspect the Remediation Area for the purposes of determining:
- The presence of weeds, exotic species, non-native plants, and commercial crops within the Remediation Area,
 - The presence of pest herbivores within the Remediation Area,
 - The presence and impact of stock within the Remediation Area,
 - The condition and serviceability of fencing or marker posts, and
 - Whether any notifiable incidents, events or activities have occurred within the Remediation Area.
- 3.3 The Remediator **must** complete and submit an Annual Monitoring Report (AMR) each calendar year for the Term of the Order. The AMR **must** be received by the Department by the 14th day of July each calendar year following the issuance of the Order. The AMR **must** be posted or emailed to the Team Leader Compliance and Regulation, South West Branch by the date specified. Failure to do so may result compliance action. A copy of the AMR template has been provided at Attachment-3 of this Order.
- 3.4 The Remediator **must** inform any future purchasers of the land, of this Order.
- 3.5 The Remediator **must** notify the Team Leader Compliance and Regulation - South West within fourteen (14) days of settlement of sale of the land subject to this Order.
- 3.6 At any time should the Remediator need clarification or explanation of the requirements and obligations associated with this Order, the Remediator should contact the Team Leader Compliance and Regulation - South West.
- 3.7 The Remediator **must** submit all reports and correspondence relating to this Order to the Team Leader Compliance and Regulation - South West:
- a) By Registered Post to:

Team Leader Compliance and Regulation – South West
NSW Department of Climate Change, Energy, the Environment and Water
PO Box 1040 Albury NSW 2640
 - or
 - b) By email to: compliance.southwest@environment.nsw.gov.au

4 RECORD KEEPING

- 4.1 The Remediators **must** retain copies of all records associated with this Order for the Term of the Order. All records are to be true, accurate, correct and in legible form.

5 DEFINITIONS

In this order, the following definitions apply:

| Term | Definition |
|--------|---|
| BC Act | The <i>Biodiversity Conservation Act 2016</i> . |

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| 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. |
| Exotic species | Means species introduced from outside of the area concerned; in the case of New South Wales, from overseas and/or interstate. Note: The source of this definition is Harden, G.W. ed. 1990-2002. <i>Flora of New South Wales: Volumes 1 – 4</i> , University of NSW Press. |
| 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> . |
| Plant Community Type (PCT) | Means Plant Community Type as it relates to the NSW Plant Community Type classification maintained in the BioNet Vegetation Classification application. PCT provide a common typology for describing, identifying and sharing information about NSW vegetation types. https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/nsw-bionet/about-bionet-vegetation-classification |
| Pest herbivores | Means hares, rabbits, and goats but does not include livestock. |
| Remediator | Means the person named in this Order and who is responsible for adhering to and complying with the Order. |
| Remediation Area | Means the areas shown on the attached maps to this Order and located within the parcels of land identified by this Order. |
| Remediation Plan | Means a plan to enhance and improve native vegetation condition within the Remediation Area identified by this Order and in accordance with the conditions of this Order. The Plan is to be prepared by a suitably qualified person approved by the Department on behalf of the Remediator. |
| Reporting Period | Means each annual reporting period (1 July to 30 June) from the commencement of this Order and for the Term of this Order. |
| Stock | Means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, pigs and goats). It does not include native wildlife. |

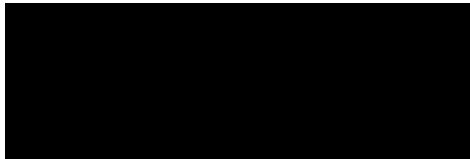
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|----------------------------------|--|
| Suitably qualified person | Means a person to be approved by the Department with appropriate qualifications, training and at least five (5) years of experience relevant to the nominated subject matters to give authoritative assessment, advice and analysis. For this Order this specifically relates to restoration ecology. |
| Term | Means the duration of the Order from the date of issue. Twenty-five (25) years. |
| The Property | Means the land parcels identified in this Order that are subject to the conditions of the Order. |
| Weed | Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> . |

WARNING AND INFORMATION ABOUT THIS ORDER

- 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. The maximum penalty that a court may impose for this offence is:
 - for a corporation, \$660,000 plus \$66,000 for each day the offence continues, and
 - for an individual, \$132,000 plus \$13,200 for each day the offence continues.
- If you fail to comply with this Order the Agency Head of the Department or his 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).
- 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 11.23(1) of the BC Act, if you are aggrieved by the decision to make this Order you may appeal to the Land and Environment Court within 30 days of this Order being served on you. However, even if an appeal is lodged, you must comply with this Order, unless the Court orders otherwise.
- 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 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 *Local Land Services Act 2013* (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). A Remediation Order is separate to any potential enforcement action.

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Senior Team Leader Compliance and Regulation
Biodiversity and Conservation Division - South West
Department of Climate Change, Energy, the Environment and Water
(by Delegation)

Attachments to Order:

1. Map of the Remediation Area
2. Initial Work Report (Template)
3. Annual Monitoring Report (Sample)

Annexures to Order:

1. Remediation Plan (Submitted by Remediator and approved by the Department)







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

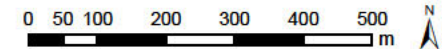
Property [redacted]
Owner: [redacted]
Property Address: [redacted]

Lot/DP: [redacted]
County: Cooper
Parish: Munduburra
LGA: Bland

Area: 10.9 ha
108884.4 sq m

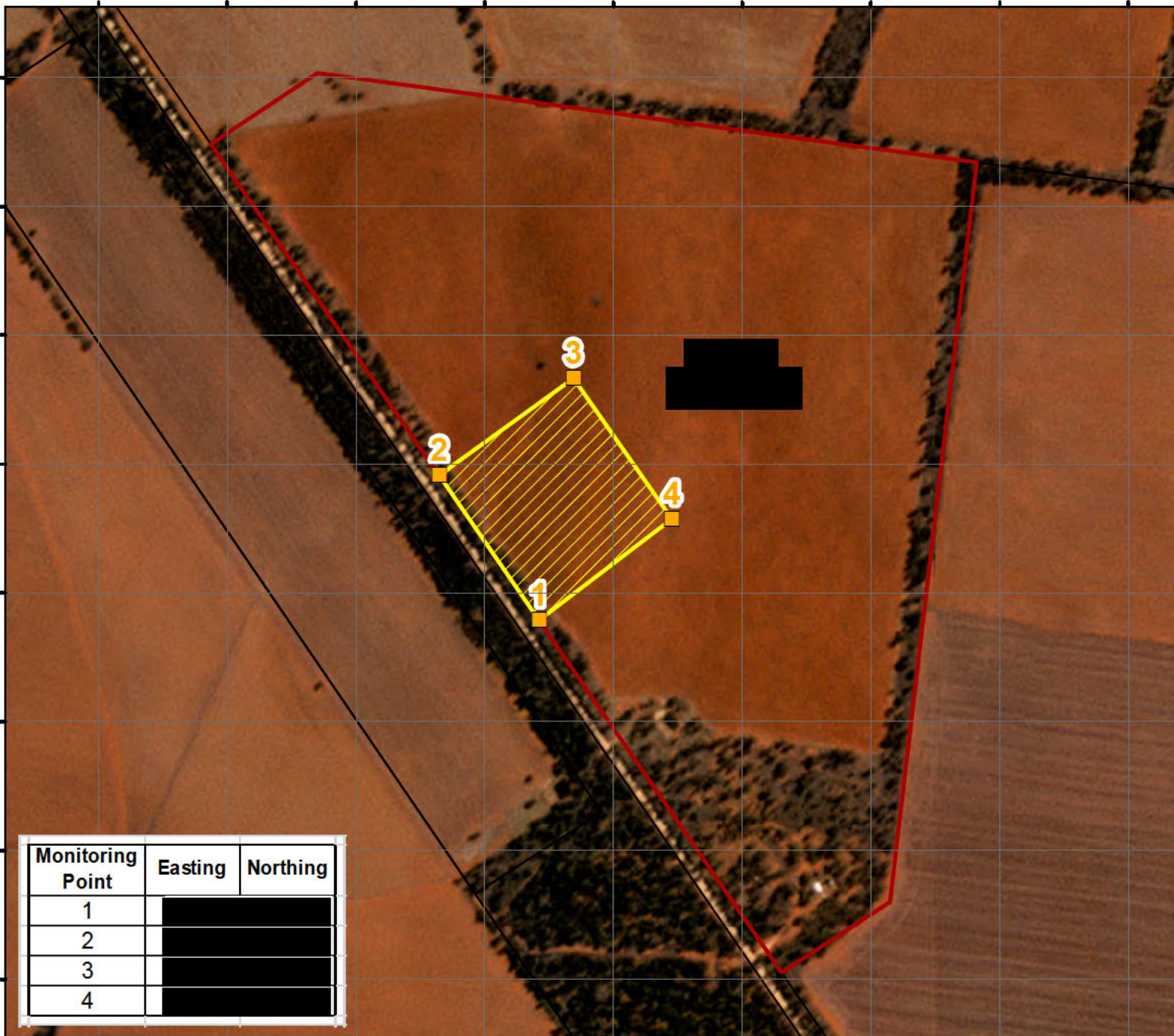
Legend

-  Remediation Area
-  The Property
-  Lot / Deposited Plan (DP)
-  Waypoints - see Table A



Base satellite imagery captured on March 2024 includes material © PLANET, 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 55
Date: 18 March 2024
Plan No: S11.15_202304789_V1

North



| Monitoring Point | Easting | Northing |
|------------------|------------|------------|
| 1 | [redacted] | [redacted] |
| 2 | [redacted] | [redacted] |
| 3 | [redacted] | [redacted] |
| 4 | [redacted] | [redacted] |

Easting