



ORDER ISSUED TO:

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

Order Number: DOC24/982109
CCMS Case Ref. No.: 202406408
Issue Date: 17 December 2024
Property: [REDACTED]
[REDACTED]

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

BY registered post: and

BY email: [REDACTED]

Date of issue: 17 December 2024

Who are we: The Department of Climate Change, Energy, the Environment & Water has responsibilities regarding the administration and enforcement of the *Biodiversity Conservation Act 2016 (NSW) (BC Act)* and its associated Regulations, and responsibilities regarding the enforcement of Part 5A of the *Local Land Services Act 2013 (NSW) (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 Climate Change, Energy, the Environment & Water) 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 information on appeals can be found on the NSW Land and Environment Court website <http://www.lec.justice.nsw.gov.au>.

Remediation Order

1. Definitions from section 1.6 of the *Biodiversity Conservation Act 2016*

Pick a plant includes ‘gather, take, cut, remove from the ground, destroy, poison, crush or injure the plant or any part of the plant’.

Plant means ‘any plant, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens, but does not include marine vegetation’.

Threatened Ecological Community means ‘a critically endangered ecological community, an endangered ecological community or a vulnerable ecological community listed in Schedule 2’.

Damage means: ‘removing or relocating any part of the habitat, and, activities that prevent the continued use of the habitat by animals.’

Habitat means: ‘an area periodically or occasionally occupied by a species or ecological community, and the biotic and abiotic components of an area’.

Threatened species means ‘a critically endangered species, an endangered species or a vulnerable species listed in Schedule 1.’

2. DEPARTMENT OF CLIMATE CHANGE, ENERGY, THE ENVIRONMENT & WATER OBSERVATIONS

The Department of Climate Change, Energy, the Environment & Water (**the Department**) became aware of vegetation removal from [REDACTED] (**the property**) and began investigating a report of alleged offence of *damaging the habitat of a threatened species* in contravention of section 2.4(1) of the BC Act.

The abovementioned alleged offence at the Property (**Attachment A**) occurred between 28 March 2018 and 16 July 2024.

Offence against section 2.4(1) of the BC Act

Information and evidence obtained to date, including site inspections, a formal record of interview, a review of statutory notices, a review of planning databases and a review of high-quality aerial photography confirm that the habitat of a threatened species has been damaged in contravention of section 2.4(1) of the BC Act between 16 July 2018 and 16 July 2024 at the property.

Observations include:

- A review of high-quality aerial images that show the removal of understorey vegetation.
- [REDACTED] admitted, under caution, during a telephone call that he had instructed [REDACTED] of [REDACTED] [REDACTED] to slash understorey vegetation at the property.
- Of importance is the publicly available mapping for the property on the NSW Biodiversity Values Map and Threshold Tool, which highlights ‘*threatened species or community with potential for serious or irreversible impacts*’. This mapping was applied to the property in September 2023. The threatened species habitat mapped at the property is *Astrotricha sp. Wallagaraugh*, which has the conservation status of **endangered** in NSW.
- Site inspections on 03 July 2024 and 16 July 2024 confirmed that the plant community type and habitat conditions are a match for that which the threatened species occurs. Merimbula Star Hair plants have been identified within vegetation immediately adjacent to the property.
- **Damage** was caused by using a slasher to remove *any part of the habitat and activities that prevent the continued use of habitat by animals*.
- **Habitat** includes ‘*an area periodically or occasionally occupied by a species or ecological community and the biotic and abiotic components of an area*’. The Department is satisfied that the property would

Remediation Order

periodically, or occasionally be occupied and that impacts occurred to biotic and abiotic components of that area.

- Section 2.4(1) of the BC Act requires that the person **knowingly** damaged the habitat. Section 2.4(2) of the BC Act states that “a person who damages habitat of a threatened species or threatened ecological community in the course of carrying out any unlawful activity is taken to know that it was habitat of that kind...” [REDACTED] and [REDACTED] are taken to have known the vegetation is habitat due to:
 - o Slashing activities which occurred at the property require an approval from Bega Valley Shire Council (BVSC).
 - o Slashing without a permit would breach BVSC’s Tree Preservation Order and
 - o A breach of the Tree Preservation Order is considered prohibited works which is *development without consent* (offence) under the *Environmental Planning and Assessment Act 1979 (EP&A Act)*.

Section 2.4(2) of the BC Act confirms that a person is taken to know of the threatened species habitat in the course of carrying out unlawful activity. As a result, the Department is satisfied that it has met the requisite burden of proof to prove that the damage occurred knowingly, and without a permission in contravention of section 2.4(1) of the BC Act.

Table 1: Threatened species which periodically or occasionally occupied vegetation of the Property.

| Group | Scientific Name | Common Name | Conservation status |
|-------|-------------------------------------|---------------------|---------------------|
| Plant | <i>Astrotricha sp. wallagaraugh</i> | Merimbula Star Hair | Endangered |

After consideration of the relevant defences which apply to a breach of section 2.4(1) of the BC Act:

- There are no approvals or exemptions under the *Rural Fire Services Act 1997* which apply to exempt the damage.
- There are no approvals or exemptions under the EP&A Act which apply to exempt the damage.
- There are no defences under Division 2 of the BC Act which apply to exempt the damage from occurring.
- Habitat damage may only be permitted through a development application and biodiversity development assessment report (**BDAR**). This must accompany a development application through Council. No BDAR was prepared for the landholding, and no DA submitted. This has resulted in no biodiversity offset credits being purchased which is in direct conflict with the planning requirements for NSW.
- As a result, due to the lack of approval and BDAR, the habitat damage at this landholding is considered unlawful, with no defences to permit the slashing over the property to occur.

Section 2.4(2) of the BC Act confirms that a person is taken to know of the threatened species habitat in the course of carrying out unlawful activity. As a result, the Department is satisfied that it has met the requisite burden of proof to prove that the damage occurred knowingly, and without a permission in contravention of section 2.4(1) of the BC Act.

Remediation Order

3. REASONS FOR VIEW FORMED

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

- a) Habitat of a threatened species or ecological community occurred at the property for the following species listed below in Table 2.

Table 2: Species' habitat damaged by activities at the property.

| Group | Scientific Name | Common Name | Conservation status |
|-------|-------------------------------------|---------------------|---------------------|
| Plant | <i>Astrotricha sp. wallagaraugh</i> | Merimbula Star Hair | Endangered |

in or as a result of the commission of an offence against section 2.4(1) of the BC Act, with no legal defences being applicable.

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 of Compliance and Regulation (South East), order [REDACTED] and [REDACTED] (the Remediators) 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 three (3) years from the date of this Order.

I, [REDACTED], Senior Team Leader of Compliance and Regulation (South East), holds delegated authority on behalf of the Environment Agency Head for the purposes of section 11.15 of the BC Act.

4. REQUIREMENTS – WHAT YOU MUST DO TO COMPLY

In this Order, Remediation Area means the areas referred to within **Attachment B**.

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

4.1 General Requirements

- 4.1.1 **Immediately from the issue date of this Order**, the remediator must abate human disturbances to the Remediation Area.
- 4.1.2 **Immediately from the issue date of this Order**, cease all slashing or mechanised removal of native vegetation from the landholding.
- 4.1.3 **Immediately from the issue date of this Order**, construction of any buildings, structures or development of any type is not permitted within the Remediation Area.
- 4.1.4 **Immediately from the issue date of this Order**, the remediator must not introduce livestock to the Remediation Area. Livestock must be prevented from entering the remediation area.
- 4.1.5 **Within 28 days of the issue date of this Order and on an ongoing basis**, the remediator must remove and prevent priority weeds by using selective methods of manual removal (by hand, or manual tool, or spot spraying), or, biological control. No mechanical slashing or broadscale spraying or removal is permitted.
- 4.1.6 **Within 28 days 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.



Remediation Order

- 4.1.7 The remediator must inform all purchasers of the land of this Order.
- 4.1.8 The remediator must notify the Environmental Agency Head within 14 days if you intend on selling the land subject to this Order.
 - 4.1.8.1 This notification is to be made to: southeast.southwest@environment.nsw.gov.au

4.2 Reporting Requirements

- 4.2.1 **Annually, for each year this Order is in force** the remediator must submit a completed Annual Monitoring Report. The Annual Monitoring Report must contain the points which are stated below. You must submit a completed report by **30th November** every year for the duration of the Order. All reports must be emailed to:

southeast.southwest@environment.nsw.gov.au

or

sent by Registered Post to:

NSW Department of Climate Change, Energy, the Environment & Water
 Attention: Senior Team Leader, Compliance and Regulation – South East
 Reference: CCMS 202406408
 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:
 - o Percentage of ground cover comprised of priority weeds;
 - o Presence or absence of pest animals in the Remediation Areas; and
 - o Risk of fire to the Remediation Areas.
- Remediation work require, including the target conditions (if applicable) 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 3 and Attachment 3.
- 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 3: 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.

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

- Accurate
- In a legible form

Remediation Order

- Kept for the duration of this Order
- Must be provided to the Department annually.

5. AN EXAMPLE OF HOW YOU CAN COMPLY

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

1. Prevent human disturbances to the remediation area for the duration of the Order, with the exception of work required for the management of priority weeds.
2. Remove all stock from the remediation area by 17/12/2024. Erect a fence to prevent livestock entry to the property.
3. Controlling priority weeds by selectively poisoning and manually removing priority weeds.
4. Retain all fallen vegetation and regenerating vegetation.
5. Send in completed monitoring report and other reporting by the 30 November 2025 and every year thereafter by 30 November for the duration of the order.
6. Install signage at the front of the property along [REDACTED]

DEFINITIONS

In this Order, the following definitions apply:

| Term | Definition |
|---------------------------------|--|
| BC Act | Means the <i>Biodiversity Conservation Act 2016</i> |
| Biological Control | The reduction of pest populations by introduction of natural competitors. |
| 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 Climate Change, Energy, the Environment & Water. |
| Habitat | Has the same meaning as defined in section 1.6 of the <i>Biodiversity Conservation Act 2016</i> . |
| 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> . |
| Priority weed | Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> . |
| Remediation Area | Means the areas located on the Property shown schematically on the map in Attachment A and B, outlined and marked "Remediation Area" being parts of [REDACTED] |
| Remediator | [REDACTED]; and [REDACTED] |
| Reporting period | Reporting period Means each annual period from the commencement of this Order |
| Term | Means 3 (three) years |
| Threatened Ecological Community | Has the same meaning as defined in section 1.6 of the <i>Biodiversity Conservation Act 2016</i> . Means a critically endangered ecological community, an endangered ecological community or a vulnerable ecological community as listed in Schedule 2 of the BC Act. |
| The Property | [REDACTED] – also known as [REDACTED] [REDACTED] The Property is shown schematically on the map in Attachment A. |
| You | The Remediator (see above). |



Remediation Order

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 Climate Change, Energy, the Environment & Water 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]

Senior Team Leader Compliance and Regulation (SE)
(by Delegation)

Attachments:

1. Attachment A – Map of the Property.
2. Attachment B – Map of the Remediation Area.
3. Attachment C – Map of the Remediation Area with monitoring points.
4. Attachment D – Map of Remediation Area vertices.



Attachment A

Property
Biodiversity Conservation Act 2016
s11.15 Remediation Order

Property Owner: [REDACTED]
Property Address: [REDACTED]
Lot/DP: [REDACTED]
County: Auckland
Parish: Bournda
LGA: Bega Valley

RO Area: 0.37 ha
3702.63 sq m

Legend

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



Base imagery captured on the 7 January 2024 includes material © Nearmap.

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: 17 December 2024
Plan No: S11.15_202406408_A1_V1





Attachment B





Remediation Area
Biodiversity Conservation Act 2016
s11.15 Remediation Order

Property
Owner: [REDACTED]
Property
Address: [REDACTED]

Lot/DP: [REDACTED]
County: Auckland
Parish: Bournda
LGA: Bega Valley

RO Area: 0.37 ha
3702.63 sq m

Legend

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



Base imagery captured on the 7 January 2024 includes material © Nearmap.

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: 17 December 2024
Plan No: S11.15_202406408_A2_V1





Attachment C

Monitoring Points
Biodiversity Conservation Act 2016
s11.15 Remediation Order

Property Owner: [REDACTED]
Property Address: [REDACTED]

Lot/DP: [REDACTED]
County: Auckland
Parish: Bournda
LGA: Bega Valley

RO Area: 0.37 ha
3702.63 sq m

Legend

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



Base imagery captured on the 7 January 2024 includes material © Nearmap.

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: 17 December 2024
Plan No: S11.15_202406408_A3_V1







Attachment D

Remediation Area Vertices
Biodiversity Conservation Act 2016
s11.15 Remediation Order

Property Owner: [REDACTED]
Property Address: [REDACTED]
Lot/DP: [REDACTED]
County: Auckland
Parish: Bournda
LGA: Bega Valley

RO Area: 0.37 ha
3702.63 sq m

Legend

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



Base imagery captured on the 7 January 2024 includes material © Nearmap.

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: 17 December 2024
Plan No: S11.15_202406408_A4_V1



North

Easting

| Area 01 | | | | |
|----------|---------|----------|----------|-----------|
| Vertices | Easting | Northing | Latitude | Longitude |
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | | | | |

| Monitoring Points | | | | |
|-------------------|---------|----------|----------|-----------|
| Vertices | Easting | Northing | Latitude | Longitude |
| MP-01 | | | | |
| MP-02 | | | | |