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## BY PERSON

### VARIATION TO A DIRECTION TO CARRY OUT REMEDIAL WORK

#### BACKGROUND

- A. The Office of Environment and Heritage (“**OEH**”) within the Department of Premier and Cabinet (“**DPC**”) has responsibility for the administration and enforcement of the *National Parks and Wildlife Act 1974* (“the Act”) and its associated Regulations.
- B. Pauline McKenzie holds the position of Director, Coastal branch, National Parks and Wildlife Service within OEH and has delegated authority on behalf of the Director-General of the Department of Premier and Cabinet for the purposes of section 91K of the NPW Act.
- C. On 28 August 2013, Ms McKenzie issued a remediation direction (“**direction**”) on Oceanic under section 91K of the NPW Act. That direction required, amongst other things:
- (a) the production of a remediation plan to be approved by OEH.
  - (b) Oceanic to comply with the approved remediation plan in the carrying out of remediation works.
- D. Oceanic prepared a remediation plan that proposed a trial phase of remediation. OEH now intends to vary the direction to implement that trial phase as the first stage of the remediation works.

#### VARIATION TO DIRECTION

- E. I, Pauline McKenzie, Director Coastal Branch, National Parks and Wildlife Service, OEH, vary the direction by:
1. Inserting the following paragraphs to the Background after paragraph M:
    - N. OEH issued a Remediation Direction under section 91K of the Act to Oceanic on 28 August 2013 in respect of the remediation area identified in **Attachment**

1. The Remediation Direction required Oceanic to submit a remediation plan to OEH for approval.

- O. Oceanic submitted a final remediation plan to OEH on 11 October 2013 ("the Oceanic remediation plan"). The Oceanic remediation plan is attached to this Direction as **Attachment 2**.
- P. OEH hereby approves the Oceanic remediation plan, subject to the modifications outlined in direction number 2 of this Direction.
- Q. OEH intends that on completion of the trial phase of remediation and receipt of Oceanic's report on the trial phase, a further variation to this Direction will be issued in relation to the remainder of the remediation works.

1. Making consequential amendments to the lettering of paragraphs N and O; and
2. Removing all paragraphs under the heading "Remediation works" and inserting instead the following paragraphs 1 to 6:

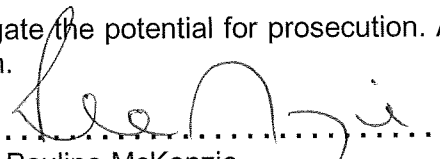
1. Oceanic must submit to OEH an Operational Project Plan in respect of the trial phase of the works described in section 3.2 of the Oceanic remediation plan ("the trial phase"). The Operational Project Plan must be submitted to OEH by 21 October and must:
  - a. be in accordance with, and give effect to, the Oceanic remediation plan (as modified in paragraph 2 below); and
  - b. include clear timeframes for the completion of key steps of the trial phase to enable the trial phase to be completed by 22 November 2013.
2. Oceanic must undertake the trial phase in accordance with the Oceanic remediation plan, as modified in the following manner:
  - a. Oceanic is responsible for all decisions regarding selection and use of contractors. Oceanic must be satisfied that any contractor engaged has the relevant expertise and experience required for the task;
  - b. Responsibility for compliance with this Direction rests with Oceanic alone. That is, the obligation to carry out all of the works and measures referred to in the Oceanic remediation plan is an obligation on Oceanic, irrespective of whether it is expressed in the Oceanic remediation plan to be a work or measure to be carried out by Oceanic, Minova Australia Pty Ltd, or a contractor;
  - c. The steps and indicative timeframes referred to Table 5.2 are omitted and replaced with the steps and timeframes specified in this Direction;
  - d. For the avoidance of doubt, where the approved remediation plan refers to ancillary activities (for example, sediment and erosion control) and monitoring activities (for example, water monitoring) being undertaken prior to grout removal works commencing, these activities must also be undertaken prior to grout removal works commencing in the trial phase.
  - e. Oceanic must ensure that a net environmental benefit (as referred to in section 3.2.3) is achieved by ensuring that:
    - i. the removal process causes as little damage as possible to the drainage channel and the surrounding environment, and
    - ii. the natural processes of the drainage channel are restored;
    - iii. native vegetation surrounding the drainage channel and other affected areas (such as access track and heli-lift sites) is able to continue to regenerate naturally (following Oceanic's post-remediation activities);
    - iv. and that any remaining grout is no longer visually intrusive.

The Oceanic remediation plan, as varied by this paragraph, constitutes the approved remediation plan. For the avoidance of doubt, where there is any further inconsistency between the approved remediation plan and this Direction, this Direction prevails to the extent of that inconsistency.

3. Oceanic must complete the trial phase by 22 November 2013.
4. Oceanic must as soon as practicable notify OEH in writing when it has completed the trial phase.
5. Oceanic must submit a report to OEH of the trial phase by 26 November 2013. The report must assess the outcomes of the trial phase and make recommendations regarding remediation of the remainder of the remediation area.
6. All documents or notices required to be provided to OEH by this Direction must be sent to: Deon van Rensburg, Manager, Lower Hunter Area, National Parks and Wildlife Service, Sandgate Rd, Shortland NSW 2307.

#### **WARNING AND INFORMATION ABOUT THIS DIRECTION**

- It is an offence against section 91Q of the Act to fail to comply with this Direction. The maximum penalty that a court may impose for this offence is:
  - for a corporation, \$220,000 plus \$22,000 for each day the offence continues and
  - for an individual, \$110,000 plus \$11,000 for each day the offence continues.
- If you fail to comply with this Direction OEH may authorise any other person to carry out the works and may then recover the cost from you (section 91O of the Act).
- This variation is issued under section 91K(3) of the Act.
- Under section 91T(1) of the Act, if you are aggrieved by the decision to make this Direction you may appeal to the Land and Environment Court within 30 days of this Direction being served on you. However, even if an appeal is lodged, you must comply with this Direction, unless the Court orders otherwise.
- Under section 188E of the Act, your obligation to comply with the requirements of this direction continues until the direction is complied with, even if the due date for compliance is passed.
- OEH may conduct inspections to determine whether this Direction is being complied with.
- Words and expressions have the same meaning as words and expressions used in the Act, except where a word is specifically defined in this Direction.
- For the purposes of this Direction, "national parks legislation" means the Act and the regulations under the Act.
- A Remediation Direction will not negate the potential for prosecution. A Remediation Direction is separate to any potential prosecution.



Pauline McKenzie

Director Coastal Branch  
(by Delegation)