

# Directions for remedial work relating to harm to Aboriginal objects and places



Office of  
Environment  
& Heritage

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BY Registered post

## DIRECTION TO CARRY OUT REMEDIAL WORK

### BACKGROUND

- A. The Office of Environment and Heritage (OEH) has responsibility for the administration and enforcement of the *National Parks and Wildlife Act 1974* ("the Act") and its associated Regulations.
- B. Mr David Trewin holds the position of Regional Manager, Greater Sydney Region within OEH.
- C. Mr David Trewin holds delegated authority for the purposes of section 91L of the *National Parks and Wildlife Act 1974* (NSW).
- D. Mr [redacted] is the owner of Lot 38 Section C DP 4709, at 32 Undercliffe Road Earlwood ("the property").
- E. OEH has investigated a report of harm to an Aboriginal object on the property.
- F. Information gathered to date, including a site inspections, examination of documents and interviews with witnesses indicates that harm to an Aboriginal object, namely a midden at site #46-6-0615, first occurred in the Remediation Area on the property on 17 October 2013 and was undertaken until 18 October 2013. During this period, the midden was disturbed with an excavation machine.
- G. Under the Act Aboriginal objects must not be harmed except in accordance with an Aboriginal Heritage Impact Permit (AHIP) approved in accordance with the Act. The investigation by OEH concluded that an Aboriginal object on the property has been harmed in contravention of the Act and in particular that none of the available defences and exemptions listed in the Act and associated Regulations in relation to Aboriginal cultural heritage applies to the harm.
- H. The works required by this Direction provide for the mitigation and rehabilitation of unlawfully harmed or damaged Aboriginal object.

### OPINION

- I. I, David Trewin, Regional Manager, Greater Sydney Region, OEH am satisfied that an Aboriginal object has been harmed on the property as a result of the commission of an offence under the Act.

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## DIRECTION TO CARRY OUT REMEDIAL WORKS

J. I, David Trewin, Regional Manager, Greater Sydney Region, OEH, in order to:

- a) control, abate or mitigate the harm to the Aboriginal object concerned
- b) protect, conserve, maintain, remediate or restore the harmed Aboriginal Object concerned

require that Mr \_\_\_\_\_ perform the following remedial works on the property within the time specified.

## REMEDIATION WORKS

### 1 Remediation area

- The remediation area is the rear 15 metres of the property, as measured from the rear boundary of the property.

### 2 Works implementation

- Erect a fence across the property, 15 metres from the rear boundary of the property, to prevent access by machinery and further damage to the Aboriginal objects present on the property.
- The fence is not to be erected without the consent of the City of Canterbury Council.
- Prepare a remediation plan to cover, among other things, long term weed management and revegetation of the site. The remediation plan is to be prepared in consultation with the Heritage Division, Office of Environment and Heritage and is subject to the approval of the Office of Environment and Heritage.

### 3 Time frame for completion of works

- A development application for the erection of the fence is to be submitted to City of Canterbury Council within 2 months of the date of issue of this Remediation Direction.
- The approved fence shall be erected within 2 months of the receipt of development consent from the City of Canterbury Council.
- The remediation plan is to be submitted to the Office of Environment and Heritage within 2 months of the date of issue of this Remediation Direction.

### 4 Remediation plan implementation

- After approval by the Office of Environment and Heritage, the remediation plan is to be implemented for the period to which it applies.

## 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 Direction is issued under section 91L of the Act.

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- Under section 91L(3) of the Act this Direction may be varied or revoked by a further notice.
- 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.

A handwritten signature in black ink, appearing to read "David Trewin", written over a horizontal dotted line.

**David Trewin**

**Regional Manager Greater Sydney Region**

**Regional Operations and heritage**

(by Delegation)