

Remediation Order

ORDER ISSUED TO:

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

Reference: DOC20/707529
Date of issue: 17 December 2020

BY: Registered post, CC: [REDACTED]

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

Basis for issuing Remediation Order

The Department of Planning, Industry and Environment (**the Department**) has responsibility for the enforcement of the *Biodiversity Conservation Act 2016 (BC Act)*, the now repealed *Native Vegetation Act 2003 (NV Act)*, and the Regulations associated with both Acts. Although the NV Act was repealed on 25 August 2017, any offence committed against the NV Act prior to that date remains subject to regulatory actions by the Department. Clause 58 of *Biodiversity Conservation (Savings and Transitional) Regulation 2017* enables the provisions of the NV Act relating to proceedings for an offence, penalty notices, court orders and remediation orders to continue to apply.

[REDACTED] is the current owner of [REDACTED]
[REDACTED], in the Moree Plains Shire Council Local Government Area (the **Property**).

Information and evidence obtained to date, including an assessment of aerial / satellite imagery and a vegetation assessment supports that **damage**, caused by **clearing** 143 hectares of native vegetation (the **Areas of interest** mapped at **Attachment A**) occurred on the Property between January and August 2017.

At all material times, it was an offence against section 12 of the NV Act for a person to carry out or authorise clearing of native vegetation, except in accordance with a development consent granted in accordance with the NV Act or a property vegetation plan.

Opinion

I, [REDACTED], Senior Team Leader, North West, Compliance and Regulation (STL NWCR), am satisfied that native vegetation has been damaged in or as a result of the commission of an offence against section 12 of the NV Act.

Delegation

I, [REDACTED], STL NWCR, hold delegated authority on behalf of the Environment Agency Head for the purposes of section 11.15 of the BC Act.

Order

I, [REDACTED], STL NWCR, order [REDACTED] (the **Remediator**) to carry out the following remediation work for the duration specified at 2.1 below.

Requirements

1. Remediation Area

- 1.1. In this Order, **Remediation Area** means the areas marked “Remediation Area” on **Attachment B**.
- 1.2. This Order requires the Remediator to inform the Environment Agency Head of any change in the ownership or occupancy of the land concerned at least 21 days prior to any such change occurring.

2. Duration

- 2.1. This Order will be in force for twenty (20) years from the date of issue; unless varied or revoked in accordance with the BC Act.

3. Remediation work

- 3.1. Implementation of the following measures must be commenced within 30 days of the issue of this Order.

Soil disturbance

- 3.2. Soil disturbance in the Remediation Areas is prohibited, except in accordance with written approval from the Department.

Remediation

- 3.3. Native vegetation is to be allowed to regenerate in the Remediation Areas as the priority method of remediation. To protect regenerating vegetation and fauna habitat the following activities are prohibited within the Remediation Areas:
 - Clearing of native vegetation – except as a requirement of this Order or with written approval from the Department.
 - Removal of fallen timber.
 - Cultivation.
 - Construction of infrastructure.
 - Aerial spraying.
- 3.4. Sow the Remediation Areas that have been subjected to cultivation with native grasses as prescribed in **Attachment C**.
- 3.5. If after a period of four years, over-storey species regeneration is occurring at a rate lower than 10 stems per hectare, then, plant over-storey species in accordance with the directions given in **Attachment C**.

Weed management

- 3.6. The Remediator must implement measures to ensure **exotic flora** do not have a significant impact on the **biodiversity values** of the Remediation Areas.
- 3.7. Without limiting this clause, the Remediator must ensure that exotic flora occupy less than 5% of total groundcover of the Remediation Areas. Control measures permitted include:
 - Spot application of herbicide.
 - Manual removal.
 - Biological control.

Pest animals

- 3.8. The Remediator must implement measures to reduce the density of **exotic animals** to a level that is not having a significant impact on the biodiversity values of the Remediation Areas; and maintain densities at or below that level using any approved means.

Livestock

- 3.9. The Remediator must implement measures to keep the Remediation Areas free of **stock**, except in accordance with a **sustainable grazing** regime approved by the Department.

Fire

- 3.10. The Remediator must implement measures to prevent fire occurring within the Remediation Areas and to suppress and extinguish any fire that does occur.

Fencing

- 3.11. Fences are to be maintained to ensure the exclusion of stock from the Remediation Areas.
- 3.12. If the Remediator wishes to continue grazing rights within the land outside the Remediation Areas, the boundaries of the defined Remediation Areas must be fenced to a standard that excludes stock.
- 3.13. The Remediator must erect signage so that any person entering the Remediation Area is aware; and does not use the land in a manner that would contradict this Order.

Access

- 3.14. The Remediator must provide reasonable access to staff of the Department for the purposes of administering this Order.
- 3.15. The Department must provide reasonable notice of an intention to inspect the Remediation Areas.

Hazards, chemicals and waste

- 3.16. The use of insecticides, herbicides and soil ameliorants is not permitted on the Remediation Areas except as approved in writing by the Department.
- 3.17. Waste is not to be placed, stored or kept in the Remediation Areas.
- 3.18. All staff, contractors and other visitors entering the Remediation Areas are to be made aware of this Order and instructed to comply with its requirements.

Costs

- 3.19. The Remediator must bear all costs associated with implementing the conditions of this Order.

4. Inspections and records

Inspections

- 4.1. The Remediator is to inspect the Remediation Areas twice each year, with a minimum of 150 days between each inspection for the purposes of determining the percentage of ground cover that is comprised of **exotic flora** and priority weeds.
- 4.2. In the Remediation Areas, there are three monitoring points located at the GPS co-ordinates given in **Table 2** and mapped at **Attachment B**. The co-ordinates given must be permanently marked to ensure the location is the same each monitoring period.

Table 1: Location of monitoring points

Monitoring Point	Latitude	Longitude	Easting	Northing
██████████	██████████	██████████	██████	██████
██████████	██████████	██████████	██████	██████
██████████	██████████	██████████	██████	██████

Records

- 4.3. The following records must be made by the Remediator for all inspections:
 - The date(s) on which the inspection was undertaken.
 - The name of the person who undertook the inspection.
 - Photographs to the north, east, south and west at each monitoring point.
 - 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 Area.
 - The proposed date(s) of that work.
- 4.4. 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.

5. Reporting

Initial works report

- 5.1. The Remediator must prepare and submit an Initial Works Report to the Department within six weeks of the date of issue of this Order. This report must contain:
- Confirmation of the exclusion of stock and dates of any actions taken to remove stock.
 - The percentage of ground cover that is comprised of exotic flora and priority weeds.
 - An assessment of pest animal presence within the Remediation Area.
 - Advice of any completed, required, or proposed work within the Remediation Area.

Annual report

- 5.2. Within 12 months of the date of issue of this Remediation Order, the Remediator must prepare and submit a Monitoring Report to the Department. A Monitoring Report must be submitted to the Department every 12 months whilst this Remediation Order is in force. Each Monitoring Report must contain the records made for all inspections (see clause 4.3).

- 5.3. Reports may be submitted to the Department by:

By mail, courier or hand to:

Compliance and Regulation Unit
Biodiversity and Conservation North West
Level 1, 48-52 Wingewarra Street
P.O. Box 2111
Dubbo NSW 2830

OR

By email to:

ROG.North@environment.nsw.gov.au

Marked to the attention of the Compliance and Regulation Unit



Senior Team Leader
Compliance and Regulation
Biodiversity and Conservation North West
(by Delegation)

Definitions

In this Order, the following definitions apply:

Term	Definition
Areas of interest	Areas where native vegetation was cleared in contravention of section 12 of the <i>Native Vegetation Act 2003</i> ; mapped at Attachment A .
BC Act	<i>Biodiversity Conservation Act 2016</i>
Clearing	Has the same meaning as defined in section 7 of the <i>Native Vegetation Act 2003</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, Industry and Environment
Exotic animals	Includes feral cats, wild dogs, feral pigs, feral goats, feral deer, foxes, hares, rabbits, and other exotic animal species but does not include livestock or native wildlife
Exotic flora	Plant species that are not "native vegetation" as defined in section 6 of the <i>Native Vegetation Act 2003</i>
Native vegetation	Has the same meaning as defined in the <i>Native Vegetation Act 2003</i>
NV Act	<i>Native Vegetation Act 2003</i>
Order	This document – a Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i>
PCT	Plant Community Type
Property	██
Remediation Area	The areas located on the Property shown schematically on the map in Attachment B and marked "Remediation Area"
Remediator	██
Stock	Means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, domesticated pigs and domesticated goats); it does not include native wildlife
Sustainable grazing	Sustainable grazing is grazing by livestock, and the management of grasslands used for grazing, that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation
Threatened Ecological Community	Has the same meaning as defined in the <i>Biodiversity Conservation Act 2016</i>
Waste	Has the same meaning as defined in the <i>Protection of the Environment Operations Act 1997</i>

Warning and information this Order

Why we serve remediation orders:

A remediation order can be issued by the Environment Agency Head (or their delegate) under section 11.15 of the *Biodiversity Conservation Act 2016* (BC Act). The written order compels a person to carry out specified remediation work or achieve a specified remediation outcome in response to damage caused as a result of certain environmental offences.

A Remediation Order will not negate the potential for enforcement action (including penalty notice or prosecution) under the BC Act, NV Act or *Local Land Services Act 2013*. A Remediation Order is separate to any potential enforcement action.

What you are required to do: The work required by this remediation order provides 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. 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.

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.

If you fail to comply with this Order, the Environment Agency Head or their 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).

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>.

Under section 11.15(4) of the BC Act this Order may be varied or revoked by a further order.

Attachments:

- A - Map of the 'Areas of interest'
- B - Maps of the 'Remediation Areas'
- C - Revegetation requirements



0 0.1 0.2 0.3 0.4 0.5 km
Datum/Projection: GCS GDA 1994

Attachment A - Areas of Interest



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This map is not guaranteed to be free from error or omission. The Department and its employees disclaim liability for any act done on the information in the map and any consequences of such acts or omissions.



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0 0.1 0.2 0.3 0.4 0.5 km
Datum/Projection: GCS GDA 1994

Attachment B - Remediation Areas



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Attachment C - Revegetation requirements

Endemic grasses

To reduce the likelihood of exotic flora / weed invasion and to promote soil stability the following endemic grass species should be sown in the Remediation Areas that have been previously cultivated:

- Curly Windmill Grass (*Enteropogon acicularis*)
- Lobed Wallaby Grass (*Austrodanthonia auriculata*)
- Windmill grass (*Chloris truncata*)
- Small flowered Wallaby Grass (*A. setacea*)
- Rough Speargrass (*Austrostipa scabra* subsp. *falcata*)

These species should be sown at >50% total groundcover per hectare in the Remediation Areas.

Overstorey regeneration

If these species fail to regenerate in accordance with condition 3.5 of this Order; plant the following species at the rates provided in **Table 3**.

Table 2: Planting rates for tree species

Scientific name	Common Name	Planting rate	Planting location
<i>Eucalyptus populnea</i> <i>subsp. bimbil</i>	Poplar Box	6 stems per hectare	All areas
<i>Casuarina cristata</i>	Belah	6 stem per hectare	More than 50m from upper edge of depressions or watercourses
<i>Geijera parviflora</i>	Wilga	2 stems per hectare	All areas
<i>Capparis mitchelli</i>	Wild Orange	2 stems per hectare	All areas
<i>Alectryon oleifolius</i>	Western Rosewood	2 stems per hectare	All areas
<i>Apophyllum anomalum</i>	Warrior Bush	1 stem per hectare	All areas