

ORDER ISSUED TO:

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

Order Number: 202002372-23

CCMS Case Ref. No.: 202002372

Property: [REDACTED]

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

BY: Email and express post

Date of issue: 29/9/2023

Who are we: The Department of Planning and Environment 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 of Planning and Environment) 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 at paragraph 3.1 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>.



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1. DEPARTMENT OF PLANNING AND ENVIRONMENT OBSERVATIONS

The Department has investigated the clearing of native vegetation and the picking of plants that are part of a threatened ecological community on the Property between 11 September 2019 and 5 October 2020.

Under Section 60N(1) of the LLS Act it is an offence to clear native vegetation in a regulated rural area without an authorisation.

Under Section 2.2(1)(b) of the BC Act it is an offence to pick plants that are part of a threatened ecological community without an authorisation.

Information and evidence obtained to date, including a site inspection, an expert ecologist report, interviews, aerial photograph interpretation and herbicide testing indicates that, between 11 September 2019 and 5 October 2020, damage occurred on the Property to Category 2 native vegetation, specifically:

- The critically endangered ecological community Shale Sandstone Transition Forest
- The endangered ecological community Western Sydney Dry Rainforest
- Native vegetation of the plant community type Sydney Hinterland Grey Myrtle Riparian Forest
- Native vegetation of the plant community type Sydney Hinterland Grey Gum Transition Forest

The damage caused to these vegetation types comprised:

- Poisoning plants by using herbicides including glyphosate, triclopyr and picloram;
- Destroying plants using machinery including a bobcat and excavator and stacking the plants; and
- Removing plants from the ground using machinery including a bobcat and excavator subsequently removing them

Information and evidence obtained to date also indicates that the damage occurred in or as a result of clearing of native vegetation contrary to section 60N of the LLS Act and picking of plants of a threatened ecological community contrary to Section 2.2(1) of the BC Act. It also indicates that none of the available defences listed in the BC Act and/or Part 5A LLS Act and associated regulations in relation to the offence apply.

The Remediation Area is designated on the in force Native Vegetation Regulatory Map, prepared pursuant to Division 2 of the LLS Act, as Category 2 – Sensitive Regulated Land.

2. REASONS FOR VIEW FORMED

I, [REDACTED], Senior Team Leader Compliance & Regulation, Greater Sydney Branch, am satisfied that the following has been damaged in or as a result of the commission of offences against Section 2.2(1) of the BC Act and Section 60N of the LLS Act:

- a) a plant or animal that is of or is part of a threatened species or threatened ecological community on the Property, namely, 12.72 ha of the critically endangered ecological community Shale Sandstone Transition Forest and 0.11 ha of the endangered ecological community Western Sydney Dry Rainforest, and
- b) native vegetation on Category 2-Regulated land under Part 5A of the LLS Act, namely, 12.72 ha of the critically endangered ecological community Shale Sandstone Transition Forest and 0.11 ha of the endangered ecological community Western Sydney Dry Rainforest, 0.69 ha of the plant community

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type Grey Myrtle Dry Rainforest and 3.40 ha of the plant community type Sydney Hinterland Transition Woodland.

In order to:

- a) maintain, remediate or restore the damaged area, habitat, plant, animal or vegetation concerned;

I, [REDACTED], Senior Team Leader Compliance & Regulation, Greater Sydney Branch, order [REDACTED] (**the Remediator**) 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 twenty five (25) years from the date of this Order:

The Senior Team Leader, Greater Sydney Branch, holds delegated authority on behalf of the Environment Agency Head for the purposes of section 11.15 of the BC Act.

3. REQUIREMENTS – WHAT YOU MUST DO TO COMPLY

In this Order, Remediation Area means the area identified as the Remediation Area in Attachment 1. In this Order, Zones 1 - 3 of the Remediation Area means the areas marked as Zones 1-3 in Attachment 1.

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

3.1 Requirements

- 3.1.1 By 24 November 2023, you must submit a Remediation Plan for the Remediation Area to [REDACTED], Senior Team Leader Compliance & Regulation.
- 3.1.2 The Remediation Plan must be prepared by an accredited person in accordance with section 6.10 of the BC Act. A public register is available: <https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor> . The person must have at least five years experience in restoration ecology.
- 3.1.3 The Remediation Plan must demonstrate how the Remediator will restore Zone 1 of the Remediation Area towards benchmark condition for the Cumberland Shale-Sandstone Ironbark Forest (Shale Sandstone Transition Forest) plant community type (PCT) of the Sydney Basin Interim Biogeographic Regionalisation for Australia (IBRA) region at Table 1.
- 3.1.4 The Remediation Plan must demonstrate how the Remediator will restore Zone 2 of the Remediation Area towards benchmark condition for the Sydney Hinterland Grey Myrtle Riparian Forest PCT of the Sydney Basin Interim Biogeographic Regionalisation for Australia (IBRA) region at Table 2.
- 3.1.5 The Remediation Plan must demonstrate how the Remediator will restore Zone 3 of the Remediation Area towards benchmark condition for the Sydney Hinterland Grey Gum Transition Forest PCT of the Sydney Basin Interim Biogeographic Regionalisation for Australia (IBRA) region at Table 3.
- 3.1.6 The Remediation Plan must include restoration targets, expressed in the same form as the benchmark condition at Table 1, for year one (1), five (5), ten (10), fifteen (15), twenty (20), fifty (50) and ninety-nine (99).
- 3.1.7 The Remediation Plan must be drafted for the Term.

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- 3.1.8 The Remediation Plan is subject to the approval of the Department.
- 3.1.9 The Remediation Plan will remain in force unless amended or revoked by the Department.
- 3.1.10 The Remediation Plan must include a monitoring and reporting regime where records are made by the Remediator and an annual report is submitted to the Department.
- 3.1.11 The approved Remediation Plan must be implemented by the Remediator(s) for the Term and will become an annexure to this Order.
- 3.1.12 By 31 December 2023, you 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 the Remediation Plan.
- 3.1.13 You must inform all purchasers of the land of this Order.
- 3.1.14 You must notify the Environment Agency Head within 14 days if you intend on selling the land subject to this Order.
- 3.1.15 All reports must be scanned and emailed to gs.complianceregulation@environment.nsw.gov.au or sent by Registered Post to:

Senior Team Leader, Compliance and Regulation
Greater Sydney Branch
Department of Planning and Environment
Locked Bag 5022
Parramatta NSW 2124

VEGETATION CLASS BENCHMARKS

Table 1: Benchmark condition for the Cumberland Shale-Sandstone Ironbark Forest (Shale Sandstone Transition Forest) PCT of the Sydney Basin IBRA region.

Benchmark attribute	Benchmark value	Unit of measure
Tree Richness	5	The number of native tree species within a plot of area 0.04 ha
Shrub Richness	8	The number of native shrub species within a plot of area 0.04 ha
Grass and Grass-like Richness	12	The number of native grass and grass-like species within a plot of area 0.04 ha
Forb Richness	14	The number of native forb species within a plot of area 0.04 ha
Fern Richness	2	The number of native fern species within a plot of area 0.04 ha
Other Richness	4	The number of native species within the other growth form group within a plot of area 0.04 ha
Tree Cover	52.0	The total foliage cover of native tree species within a plot of area 0.04 ha
Shrub Cover	15.0	The total foliage cover of native shrub species within a plot of area 0.04 ha
Grass and Grass-like Cover	59.0	The total foliage cover of native grass and grass-like species within a plot of area 0.04 ha

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Forb Cover	9.0	The total foliage cover of native forb species within a plot of area 0.04 ha
Fern Cover	1.0	The total foliage cover of native fern species within a plot of area 0.04 ha
Other Cover	4.0	The total foliage cover of native species within the other growth form group within a plot of area 0.04 ha
Total Length Fallen Logs	40	The length of fallen logs within a plot of area 0.1 ha
Litter Cover	40	The % cover of litter is assessed as the average percentage ground cover of litter recorded from five 1m x 1m plots evenly located along a transect that bisects the 0.1 ha plot

Table 2: Benchmark condition for the Sydney Hinterland Grey Myrtle Riparian Forest PCT of the Sydney Basin IBRA region.

Benchmark attribute	Benchmark value	Unit of measure
Tree Richness	8	The number of native tree species within a plot of area 0.04 ha
Shrub Richness	13	The number of native shrub species within a plot of area 0.04 ha
Grass and Grass-like Richness	5	The number of native grass and grass-like species within a plot of area 0.04 ha
Forb Richness	7	The number of native forb species within a plot of area 0.04 ha
Fern Richness	6	The number of native fern species within a plot of area 0.04 ha
Other Richness	11	The number of native species within the other growth form group within a plot of area 0.04 ha
Tree Cover	58.0	The total foliage cover of native tree species within a plot of area 0.04 ha
Shrub Cover	85.0	The total foliage cover of native shrub species within a plot of area 0.04 ha
Grass and Grass-like Cover	5.0	The total foliage cover of native grass and grass-like species within a plot of area 0.04 ha
Forb Cover	3.0	The total foliage cover of native forb species within a plot of area 0.04 ha
Fern Cover	17.0	The total foliage cover of native fern species within a plot of area 0.04 ha
Other Cover	16.0	The total foliage cover of native species within the other growth form group within a plot of area 0.04 ha
Total Length Fallen Logs	59	The length of fallen logs within a plot of area 0.1 ha
Litter Cover	70	The % cover of litter is assessed as the average percentage ground cover of litter recorded from five 1m x 1m plots evenly located along a transect that bisects the 0.1 ha plot

Table 3: Benchmark condition for the Sydney Hinterland Grey Gum Transition Forest PCT of the Sydney Basin Bioregion IBRA region.

Benchmark attribute	Benchmark value	Unit of measure
Tree Richness	6	The number of native tree species within a plot of area 0.04 ha
Shrub Richness	23	The number of native shrub species within a plot of area 0.04 ha

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Grass and Grass-like Richness	9	The number of native grass and grass-like species within a plot of area 0.04 ha
Forb Richness	9	The number of native forb species within a plot of area 0.04 ha
Fern Richness	2	The number of native fern species within a plot of area 0.04 ha
Other Richness	4	The number of native species within the other growth form group within a plot of area 0.04 ha
Tree Cover	60.0	The total foliage cover of native tree species within a plot of area 0.04 ha
Shrub Cover	55.0	The total foliage cover of native shrub species within a plot of area 0.04 ha
Grass and Grass-like Cover	23.0	The total foliage cover of native grass and grass-like species within a plot of area 0.04 ha
Forb Cover	6.0	The total foliage cover of native forb species within a plot of area 0.04 ha
Fern Cover	0.0	The total foliage cover of native fern species within a plot of area 0.04 ha
Other Cover	3.0	The total foliage cover of native species within the other growth form group within a plot of area 0.04 ha
Total Length Fallen Logs	45	The length of fallen logs within a plot of area 0.1 ha
Litter Cover	75	The % cover of litter is assessed as the average percentage ground cover of litter recorded from five 1m x 1m plots evenly located along a transect that bisects the 0.1 ha plot

DEFINITIONS

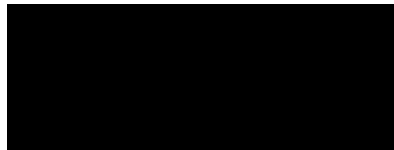
In this Order, the following definitions apply:

Term	Definition
BC Act	The <i>Biodiversity Conservation Act 2016</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 and Environment.
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> .
Remediation Area	The areas located on the Property shown schematically on the map in Attachment 1 outlined in yellow and marked "Remediation Area" being parts of [REDACTED].
Remediators	[REDACTED]
Reporting period	Reporting period means each annual period from the commencement of this Order.
Term	Means 25 years.
The Property	[REDACTED]

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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 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.



Senior Team Leader, Compliance and Regulation
Greater Sydney Branch
(by Delegation)

Attachment:








1. Map of the Remediation Area

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

Property Owner [REDACTED]
 Property Address [REDACTED]
 Lot [REDACTED]
 County [REDACTED]
 Parish [REDACTED]
 LGA [REDACTED]

Area: 12.0ha, 120488.6 square m

Legend

-  Waypoints – see Table A
-  Remediation Area Zone 1
-  Remediation Area Zone 2
-  Remediation Area Zone 3
-  The Property
-  Lot / Deposited Plan (DP)
-  Watercourse

Base imagery captured on the 09.03.2023 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 56
 Date: 25 September 2023
 Plan No: S11.15_202002372_V2



