





# Remediation Order

## 1. DEPARTMENT OF PLANNING AND ENVIRONMENT OBSERVATIONS

The Department has been investigating a report of an alleged offence of picking a plant of a threatened ecological community in contravention of section 2.2 of the *Biodiversity Conservation Act (2016)* ('**BC Act**').

Contravention of the above Act at the Property (**Attachment 1**) is alleged to have occurred between September 2019 and March 2023.

### Offence against section 2.2 of the BC Act

Information and evidence obtained to date, including a site inspection, formal records of interview, a review of high-quality aerial photography, ecological assessment, physical evidence obtained from the property and a review of available biodiversity information all indicate that the picking of plants from a threatened ecological community (TEC) has occurred in contravention of section 2.2 of the BC Act between September 2019 and March 2023. Observations include:

- Pick a plant includes '*gather, take, cut, remove from the ground, destroy, poison, crush or injure the plant or any part of the plant*'.
- A site inspection confirmed that picking was affected by *ringbarking*, as well as the *removal from ground and injure the plant* sustained by the introduction of farm animals (namely pigs), which entirely removed native vegetation and groundcover from paddocks of vegetation;
- Following a site inspection and ecological assessment the following has been confirmed:
  - o Vegetation at the landholding comprises of Plant Community Type ('**PCT**') 3223 – *Southern Highlands Shale-Basalt Wet Forest*.
  - o This PCT aligns with a threatened ecological community ('**TEC**');
  - o The TEC is known as the *Robertson Basalt Tall Open Forest in the Sydney Basin and South Eastern Highlands Bioregions* ('**RBTOF**');
  - o The RBTOF has the conservation status of '*critically endangered ecological community*' in NSW; and
  - o Vegetation at the property meets the Final Determination of the RBTOF.
- The NSW Biodiversity Values Map and Threshold Tool confirms much of the property to be '*threatened species or communities with potential for serious and irreversible impacts*' under clause 7.3(3)(d) of the *BC Regulation (2017)*.
- A Biodiversity Values Explanation Report ('**BVER**') obtained from the Map Review Team of the Department of Planning and Environment confirms most of the vegetation at the property to be *threatened species or community with potential for serious and irreversible impacts* due to the presence of RBTOF.

Under section 2.2 of the BC Act, it is an offence to pick a plant from a threatened ecological community. This is a strict liability offence.

## 2. REASONS FOR VIEW FORMED

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

- a) Critically endangered ecological community known as the *Robertson Basalt Tall Open Forest in the Sydney Basin and South Eastern Highlands Bioregions* has occurred at the Property

in or as a result of the commission of an offence against section 2.2 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.



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I, [REDACTED], Senior Team Leader of Compliance and Regulation (South East), 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 (20) 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.

## 3. REQUIREMENTS – WHAT YOU MUST DO TO COMPLY

In this Order, Remediation Area means the areas referred to within **Attachment 2**.

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

### 3.1 General Requirements

- 3.1.1 **Immediately from the issue date of this Order** the remediator must abate human disturbances to the Remediation Area.
- 3.1.2 **Within 28 days of the issue date of this Order** the remediator must remove all livestock from the Remediation Area, and prevent them from entering the remediation area.
- 3.1.3 **Within 28 days of the issue date of this Order** the remediator must remove and prevent priority weeds by using selective methods of poisoning via spot spraying and/or manual removal.
- 3.1.4 **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.
- 3.1.5 **Within 28 days of the issue date of this Order**, construction of any buildings or structures is not permitted within the Remediation Areas. No prefabricated buildings are to be introduced to the Remediation Areas.
- 3.1.6 The remediator must inform all purchasers of the land of this Order.
- 3.1.7 The remediator must notify the Environmental Agency Head within 14 days if you intend on selling the land subject to this Order.

### 3.2 Revegetation requirements

- 3.2.1 **Within 90 days of this Order**, The Remediator must submit a Remediation Plan for the Remediation Area to [REDACTED], Senior Team Leader Compliance and Regulation.
- 3.2.2 The Remediation Plan must be prepared by a suitably qualified person. The suitably qualified person must be approved by the Department.
- 3.2.3 The Remediation Plan must demonstrate how the Remediator will restore the Remediation Area towards the benchmark condition for the Southern Escarpment Wet Sclerophyll Forests vegetation class of the Sydney Basin IBRA region Interim Biogeographic Regionalisation for Australia (IBRA) region at **Table 2**.
- 3.2.4 The Remediation Plan must include restoration targets, expressed in the same form as the benchmark condition at Table 2, for year one (1), five (5), ten (10), fifteen (15), twenty (20).
- 3.2.5 The Remediation Plan must be drafted for the Term.
- 3.2.6 The Remediation Plan is subject to the approval of the Department.



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## 3.3 Reporting Requirements

- 3.3.1 **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 30<sup>th</sup> November every year for the duration of the Order. All reports must be emailed to:

[rog.south@environment.nsw.gov.au](mailto:rog.south@environment.nsw.gov.au)

or

sent by Registered Post to:

NSW Department of Planning and Environment  
 Attention: Senior Team Leader, Compliance and Regulation – South East  
 Reference: CCMS 202204049  
 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 1 and Attachment 2 and 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 1: 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
- Kept for the duration of this Order
- Must be provided to the Department annually.



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## 4. 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 29/09/2023.
3. Controlling priority weeds by selectively poisoning and manually removing priority weeds 4 times per year.
4. Send in completed monitoring report and other reporting by the 30 November 2023 and every year thereafter by 30 November.

## DEFINITIONS

In this Order, the following definitions apply:

Term	Definition
BC Act	Means 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	Means 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>
Pick	<b>pick</b> a plant includes gather, take, cut, remove from the ground, destroy, poison, crush or injure the plant or any part of the plant.
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 2 and 3 outlined in green and marked "Remediation Area" being parts of [REDACTED].
Remediator	[REDACTED]
Reporting period	Reporting period Means each annual period from the commencement of this Order
Term	Means 20 years
Threatened Ecological Community	means a critically endangered ecological community, an endangered ecological community or a vulnerable ecological community listed in Schedule 2 of the BC Act.
The Property	[REDACTED]. The Property is shown schematically on the map in Attachment 1.
You	The Remediator (see above)



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**Table 2: Benchmark condition for the Southern Escarpment Wet Sclerophyll Forests vegetation class of the Sydney Basin IBRA region.**

Benchmark attribute	Benchmark value	Unit or measure
Tree Richness	6	The number of native tree species within a plot of area 0.04 ha
Shrub Richness	10	The number of native shrub species within a plot of area 0.04 ha
Grass and Grass like richness	6	The number of native grass and grass-like species within a plot of area 0.04 ha
Forb richness	12	The number of native forb species within a plot of area 0.04 ha
Fern richness	4	The number of native fern species within a plot of area 0.04 ha
Other richness	7	The number of native species within the other growth form group within a plot of area 0.04 ha
Tree cover	72.0	The total foliage cover of native tree species within a plot of area 0.04 ha
Shrub cover	22.0	The total foliage cover of shrub species within a plot of area 0.04 ha
Grass and Grass like cover	14.0	The total foliage cover of native grass and grass-like species within a plot of area 0.04 ha
Forb cover	11.0	The total foliage cover of native forb species within a plot of area 0.04 ha
Fern cover	18.0	The total foliage cover of native fern species within a plot of area 0.04 ha
Other Cover	11.0	The total foliage cover of native species within the other growth form group within a plot of area 0.04 ha
Total length of fallen logs	47	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

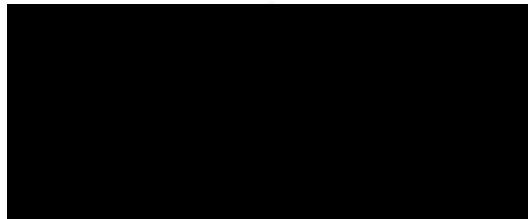


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## WARNING AND INFORMATION ABOUT THIS ORDER

- 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 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).
- 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 Planning and Environment 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 (SE)  
(by Delegation)

### Attachments:

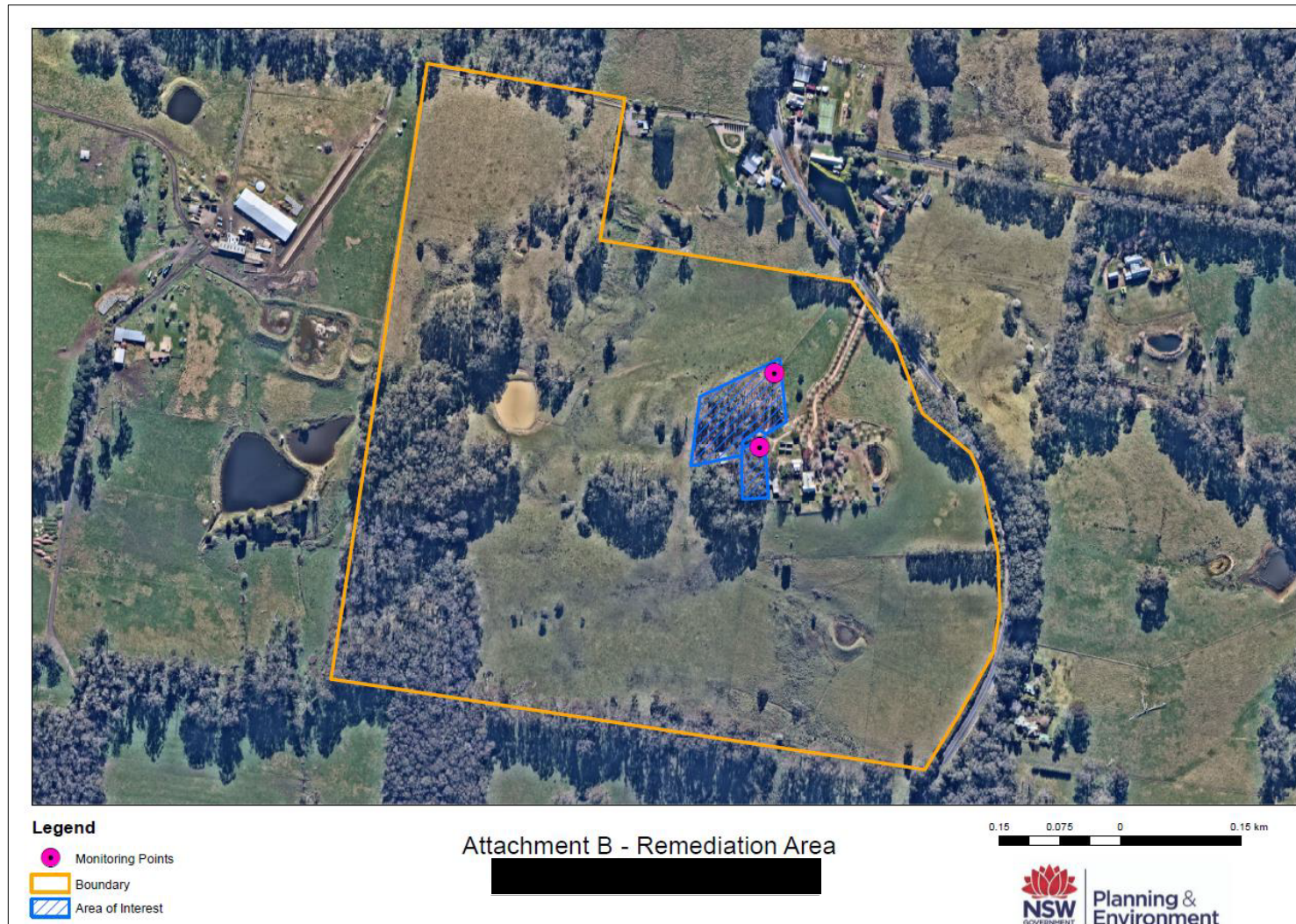
1. Attachment A - Map of the Property.
2. Attachment B - Map of the Remediation Area – property scale.
3. Attachment C - Map of the Remediation Area – zoomed in.

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# Remediation Order



# Remediation Order

