



Remediation Order

ORDER ISSUED TO:

[REDACTED]
[REDACTED]
[REDACTED]

By Email: [REDACTED]

By Registered Post:

[REDACTED]
[REDACTED]
[REDACTED]

Order Number: 980628
CM9 Ref. No.: DOC22/883304
Issue Date: 11.11.2022
Property: [REDACTED]

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

Why is the EPA writing to you?

The Environment Protection Authority (EPA) is satisfied that native vegetation has been damaged in or as a result of a native vegetation offence under Part 5B of the *Local Land Services Act 2013*. The EPA has issued you with this Order. Further information is set out below.

What are you required to do?

Please read this Order carefully and carry out the remediation work specified in the Order by the date required. If you have any queries about this matter, please contact [REDACTED] on [REDACTED].

BASIS FOR ISSUING REMEDIATION ORDER

- A. The New South Wales Environment Protection Authority (EPA) has responsibilities regarding the enforcement of the *Biodiversity Conservation Act 2016* (NSW) (**BC Act**) and Part 5B of the *Local Land Services Act 2013* (NSW) (**LLS Act**).
- B. [REDACTED] is the owner of the [REDACTED] [REDACTED] (the **Property**).
- C. Private Native Forestry Plan number [REDACTED] (approved by Local Land Services under Part 5B of the LLS Act on 24 July 2020) (**PNF Plan** [REDACTED]) applies to the Property.

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- D. The EPA has investigated a report of damage to native vegetation, specifically trees of the genus *Allocasuarina* (forest oak), during harvesting operations on the Property between July 2020 and February 2021.
- E. Information and evidence obtained to date, including site inspections, response to statutory notices and an interview with a witness, support that damage to native vegetation caused by harvesting operations occurred on the Property between July 2020 and February 2021.

EPA investigations

- F. On 11 February 2021, EPA authorised officers (the **Officers**) conducted an inspection of the Property in the area marked in red in Figure 1 of Attachment A. During the inspection, the Officers observed that:
- i. A large number of trees, which appeared to be forest oak, had been damaged over approximately 8.59 hectares of the Property in the area marked in red in Figure 1 of Attachment A.
 - ii. These trees (including the root balls) had been removed from the ground or pushed over and the debris stacked into piles and windrows. Photos 1 and 2, taken by the Officers during the inspection on 11 February 2021, show damaged forest oak that have been removed or pushed over and stacked into windrows.
 - iii. Throughout the area marked in red in Figure 1 of Attachment A, very few forest oak remained standing. The adjacent undisturbed area to the north-east and north-west of the Property contained large numbers of forest oak within the mid-storey.
- G. On 23 June 2021 and 29 June 2021, EPA authorised officers conducted further inspections of the Property in the area marked in orange in Figure 1 of Attachment A. During these inspections, EPA officers took 22 specimens of vegetation from 22 piles of stacked vegetation debris that were distributed over approximately 5.83 hectares of the Property in the area marked in yellow on Figure 2 of Attachment A. One specimen was taken from each pile. These specimens were sent to the National Herbarium of NSW for identification. The National Herbarium of NSW determined 14 of the 22 specimens taken from the Property to be of the genus *Allocasuarina*. The other 8 specimens were determined to be either of the genus *Allocasuarina* or *Casuarina*. Photos 3, 4 and 5 of Attachment A show damaged *Allocasuarina* in windrows at the Property from which EPA officers collected specimens on 23 and 29 June 2021.
- H. The EPA has information that on or about 3 August 2020, [REDACTED] contracted on your behalf to supply logs obtained under PNF Plan [REDACTED] to [REDACTED], and that timber was supplied under this contract on or about 4, 5, 24 and 25 August 2020.
- I. On 22 September 2021, the EPA issued you with a Notice to Provide Information and/or Records under section 12.8(1) of the BC Act (**Notice**) in relation to the EPA's investigation of an alleged offence under section 60ZZA(1) of the LLS Act. The Notice required you to provide information and records pertaining to harvesting operations or clearing of native vegetation carried out at the Property. In response to the Notice, your legal representative, [REDACTED], provided a number of documents. This included an invoice from [REDACTED] for tractor hire dated 7 August 2020, a letter from [REDACTED] dated 9 March 2020 referring to a quote to supply Phase 3 overhead power to the Property, and an [REDACTED]

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certified plan dated 19 October 2020 for a new installation (electrical reticulation) at the Property showing future subdivision lots.

Relevant legislation and legal requirements

- J. Section 11.15(1)(e) of the BC Act provides that the Environment Agency Head may order a person to carry out specified remediation work in a specified manner and within a specified time, if the Environment Agency Head is satisfied that any native vegetation on land to which a private native forestry plan under the LLS Act applies has been damaged in or as a result of the commission of a native vegetation offence under Part 5B of the LLS Act.
- K. Section 14.7A(1)(a) of the BC Act provides that a reference to the Environment Agency Head is taken to include the EPA.
- L. The BC Act defines:
- i. “native vegetation” to have the same meaning as in Part 5A of the LLS Act.
 - ii. “native vegetation offence” to mean any offence under the native vegetation legislation.
 - iii. “native vegetation legislation” to include Part 5B (Private Native Forestry) of the LLS Act.
- M. Part 5A, section 60B of the LLS Act provides:
- (1) For the purposes of this Part, **native vegetation** means any of the following types of plants native to New South Wales—
 - (a) trees (including any sapling or shrub or any scrub),
 - (b) understorey plants,
 - (c) groundcover (being any type of herbaceous vegetation),
 - (d) plants occurring in a wetland.
 - (2) A plant is native to New South Wales if it was established in New South Wales before European settlement. The regulations may authorise conclusive presumptions to be made of the species of plants native to New South Wales by adopting any relevant classification in an official database of plants that is publicly accessible.
- N. Section 106 of the *Local Land Services Regulation 2014 (LLS Regulation)* provides:
- (1) For the purposes of Part 5A of the Act, a species of plant may be conclusively presumed to be native to New South Wales if it is listed on the official database, unless it is identified on that database as an introduced species only.
 - (2) In this clause—

the official database means the database of flora known as “New South Wales Flora Online”, maintained by the Royal Botanic Gardens and Domain Trust and published on the website of the Trust.
- O. Section 60ZZA(1) of Part 5B of the LLS Act provides that it is an offence to contravene a requirement imposed by a private native forestry plan or by an applicable private native forestry code of practice.

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- P. At all material times, the applicable private native forestry code of practice was the *Private Native Forestry Code of Practice for Northern NSW*, published in the Gazette on 16 August 2013 (the **Code**). Clause 4.3 of the Code provided:

4.3 Minimising damage to retained trees and native vegetation

- 1) *As far as practicable, forestry operations must not damage protected trees.*
- 2) *Without detracting from subclause (1):*
 - (a) *debris must not be heaped around protected trees*
 - (b) *machinery operations must not harm protected trees*
 - (c) *directional felling techniques must be employed to avoid (as far as is practicable) damage to protected trees.*
- 3) *In this clause **protected trees** are defined as:*
 - (a) *trees required to be retained under clause 4.2*
 - (b) *plants of the genus *Xanthorrhoea* (grass trees), *Allocasuarina* (forest oak) and genus *Banksia**
 - (c) *other trees that are required to be retained by this Code.*

Contravention of the Code and section 60ZZA(1) of the LLS Act

- Q. Based on the EPA's investigations outlined above, the EPA believes you have contravened clause 4.3 of the Code and section 60ZZA(1) of the LLS Act in that:
- i. PNF Plan [REDACTED] applies to the Property;
 - ii. PNF Plan [REDACTED] provides that all forestry operations must be carried out in accordance with the Code;
 - iii. Forestry operations, being harvesting operations, occurred at the Property between July 2020 and February 2021;
 - iv. The harvesting operations on the Property damaged protected trees, being plants of the genus *Allocasuarina* (forest oak), over approximately 5.83 hectares of the Property in the area outlined in yellow in Figure 2 of Attachment A;
 - v. It was practicable for the harvesting operations not to damage protected trees by removing them from the ground and pushing them into piles and windrows over approximately 5.83 hectares of the Property in the area outlined in yellow in Figure 2 of Attachment A. Industry standards for avoiding damage to protected trees include directional felling, caution when operating machinery and not entering areas with large numbers of protected trees.

Damage to native vegetation in or as a result of the commission of a native vegetation offence under Part 5B of the LLS Act

- R. Pursuant to section 106 of the LLS Regulation, trees of the genus *Allocasuarina* (forest oak) may be conclusively presumed to be native to New South Wales as they are listed on the official

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database and are not identified on that database as an introduced species only. Therefore, forest oak is “native vegetation” for the purposes of the BC Act.

- S. An offence against section 60ZZA(1) of the LLS Act is a “native vegetation offence” as it is an offence under Part 5B of the LLS Act.
- T. Based on the EPA’s investigations outlined in paragraphs F to I and the matters outlined in paragraph Q of this Order, the EPA is satisfied that native vegetation, being trees of the genus *Allocasuarina* (forest oak), on the Property to which PNF Plan [REDACTED] applies have been damaged in the area of the Property outlined in yellow in Figure 2 of Attachment A in or as a result of a native vegetation offence, being an offence against section 60ZZA(1) of the LLS Act.

OPINION

I, [REDACTED], Regional Manager, Regulatory Operations, NSW EPA, am satisfied that the following has been damaged:

- a) native vegetation, being trees of the genus *Allocasuarina* (forest oak), on the Property to which PNF Plan [REDACTED] applies;

in or as a result of the commission of a native vegetation offence, being an offence against section 60ZZA(1) of the LLS Act.

ORDER

Pursuant to section 11.15 of the BC Act and under delegation from the Environment Agency Head, I, [REDACTED], Regional Manager, Regulatory Operations NSW EPA, order [REDACTED] (the **Remediator**) to carry out the following remediation work on the Property within the time specified.

REQUIREMENTS

1. General Requirements

- 1.1 By 01/12/2022 you must remove all livestock (if any are present) from the area of the Property outlined in yellow hatching and marked “Remediation Area” on Map 1 in Attachment A (**Remediation Area**). You must control any livestock and prevent them from entering the Remediation Area for the Term, subject to the exception in paragraph 1.2.
- 1.2 During the Term, grazing to reduce fire risk in the Remediation Area may be undertaken if a certificate is issued by the NSW Rural Fire Service.
- 1.3 Domestic goats must be excluded from the Remediation Area for the Term and paragraph 1.2 does not authorise any grazing of domestic goats in the Remediation Area.
- 1.4 During the Term, people may access the Remediation Area (including access by farm vehicles or equipment) where necessary to carry out ordinary environmental maintenance works (excluding

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slashing or mowing) within the Remediation Area such as fencing, control of feral pests and weed control, bushfire hazard reduction, or to otherwise comply with this Order, or for the purpose of grazing permitted by this Order.

1.5 No dams are to be constructed within the Remediation Area during the Term.

1.6 By 01/02/2023, you must remove and prevent weeds within the Remediation Area by using selective methods of poisoning and manual removal. Weed control must be undertaken within the Remediation Area during each subsequent year for the Term at appropriate intervals for the stages of vegetative growth for the weeds that are present. “Weeds” for the purpose of this paragraph means:

- (a) a plant that is a pest as defined by s 15(2) of the *Biosecurity Act 2015*;
- (b) a plant listed on the high threat weeds list published in the Biodiversity Assessment Method Calculator which supports the Biodiversity Assessment Method 2020;
- (c) weeds of concern listed by the Local Council pursuant to a power conferred on it by an Act or Regulation of New South Wales; and
- (d) weeds likely to impact on agriculture productivity and defined by the NSW Department of Primary Industries or Local Land Services pursuant to a power conferred on them by an Act or Regulation of New South Wales.

1.7 By 01/02/2023 you must erect signage so that any person entering the Remediation Area is aware of the Order and does not use the Remediation Area in a manner that would contradict this Order. You must maintain the signage in good order to ensure it remains visible and legible for the Term.

2. Notification and Reporting Requirements

2.1 You must notify the EPA of any change in the ownership or occupancy of the land subject to this Order at least 14 days prior to any such change occurring.

2.2 By 1 July each year of the Term, you must submit to the EPA a letter or email outlining your compliance with Part 1 ‘General Requirements’ of this Order.

2.3 By 1 July each year of the Term, you must submit to the EPA copies of photos taken at each of the monitoring points indicated on Map 2 in Attachment A. The photos must be taken during the 30 days before 1 July each year. At each monitoring point, photos are to be taken of the vegetation towards each compass point, meaning North, East, South and West. Each photo is to be labelled by identifying the date the photo was taken, the relevant monitoring point and the direction the photo was taken.

2.4 The 2024 and 2027 letters or emails submitted under paragraph 2.3 are to respectively be accompanied by an independent report prepared by a suitably qualified and experienced person providing a monitoring report to the EPA outlining the level of regeneration of *Allocasuarina* that has occurred over the Remediation Area.

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2.5 All notifications, information, documents and records required by this Order must be submitted by either:

- (a) Email at: EPA.Northopsregional@epa.nsw.gov.au; or
- (b) Letter by Registered Post to:

Unit Head, Regulatory Operations Regional North
NSW EPA
PO Box 63
Port Macquarie NSW 2444.

3. Term

3.1 The Term of this Remediation Order commences on 12 November 2022 and ends on 12 November 2042.

DEFINITIONS

In this Order, the following definitions apply:

Term	Definition
BC Act	<i>Biodiversity Conservation Act 2016 (NSW)</i>
Code	<i>Private Native Forestry Code of Practice for Northern NSW</i> published in the NSW Government Gazette on 16 August 2013 and reprinted with minor amendments in June 2016
damage	Damage has the same meaning as defined in section 11.14 of the BC Act
EPA	NSW Environment Protection Authority
damage	Has the same meaning as in section 11.14 of the BC Act
LLS Act	<i>Local Land Services Act 2013 (NSW)</i>
LLS Regulation	<i>Local Land Services Regulation 2014 (NSW)</i>
native vegetation	Has the same meaning as in Part 5A of the LLS Act
Order	This document: a Remediation Order issued under section 11.15 of the BC Act
Property	[REDACTED]
Remediation Area	The area of the Property outlined in yellow hatching and marked "Remediation Area" on Map 1 in Attachment A
Remediator	[REDACTED]
suitably qualified person	A person with appropriate qualifications, training and at least five (5) years of experience relevant to the nominated subject matter(s) to give authoritative assessment, advice and analysis. For this Order this specifically relates to restoration ecology.
Term	Means the duration of this Order, as provided in clause 3.1 of this Order

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WARNING AND INFORMATION ABOUT THIS ORDER

- This Order is issued under section 11.15 of the BC Act.
- It is an offence to contravene this Order without reasonable excuse or to intentionally obstruct anyone who is carrying out remediation work under this Order (section 11.22 of the BC Act). The maximum penalty that a court may impose for a contravention of this Order is \$660,000 (and a further \$66,000 for each day the offence continues) for a corporation, and \$132,000 (and a further \$13,200 for each day the offence continues) for an individual.
- You can appeal to the Land and Environment Court against the giving of this Order (or any terms of this Order) within 30 days of the service of the Order (section 11.23 of the BC Act). However, even if an appeal is lodged, you must comply with this Order, unless the Court orders otherwise.
- 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 specified remediation work and may then recover the cost of that remediation work 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 takes immediate effect from the date of issue. 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 (section 13.11 of the Act).
- If you comply with this Order but were not the person who caused the damage concerned, you may recover the cost of complying with the Order as a debt in a court of competent jurisdiction from the person who caused the damage (section 11.21 of the BC Act).
- The EPA may conduct inspections to determine whether this Order is being complied with.
- This Order may be varied or revoked by further order (section 11.15(4) of the BC Act).
- 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.


Regional Manager

Regulatory Operations

NSW Environment Protection Authority

(by Delegation)

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ATTACHMENT A

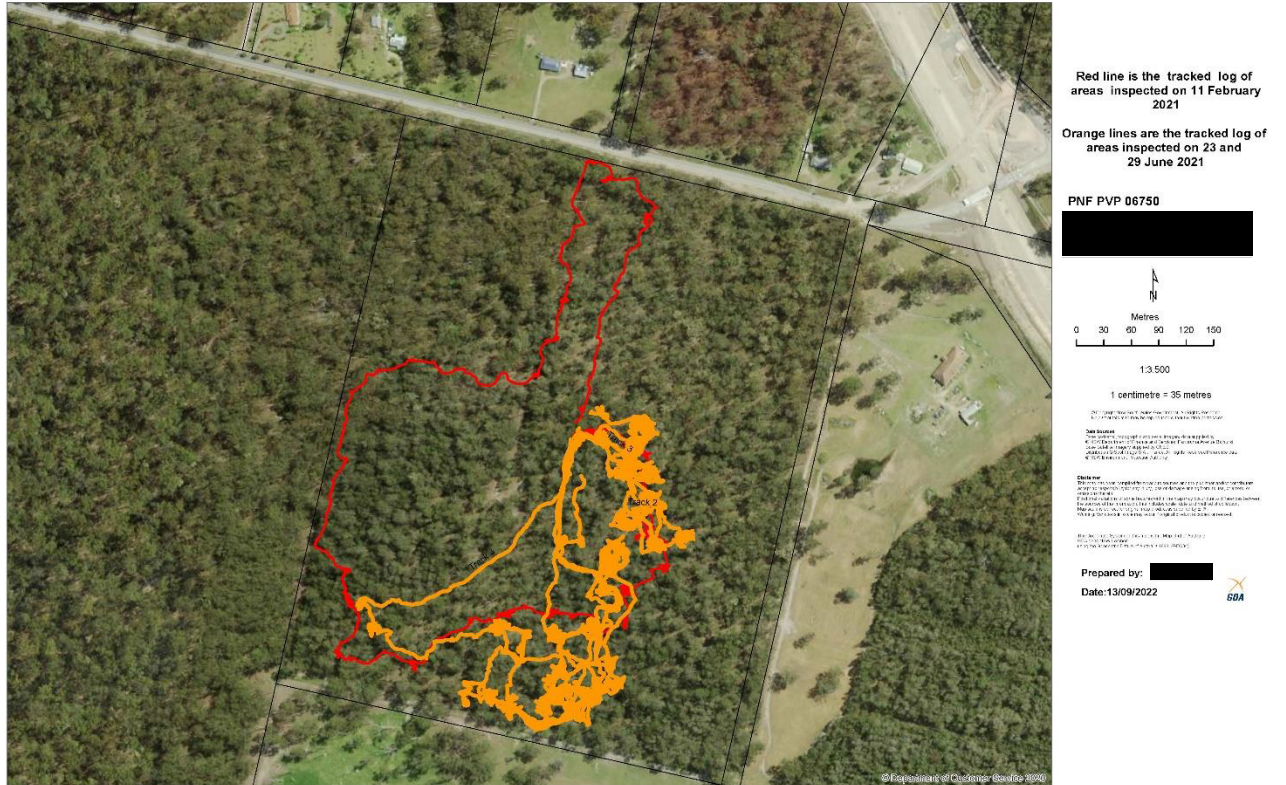


Figure 1: Map of the Property showing areas inspected by EPA officers on 11 February 2021 in red and areas inspected on 23 and 29 June 2021 in orange.

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Photo 1: Forest oak at the Property damaged by being pushed into windrow. Photo taken during the inspection on 11 February 2021.

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Photo 2: Forest oak at the Property damaged by removal of rootball, and scattered windrows in the distance. Photo taken during inspection on 11 February 2021.

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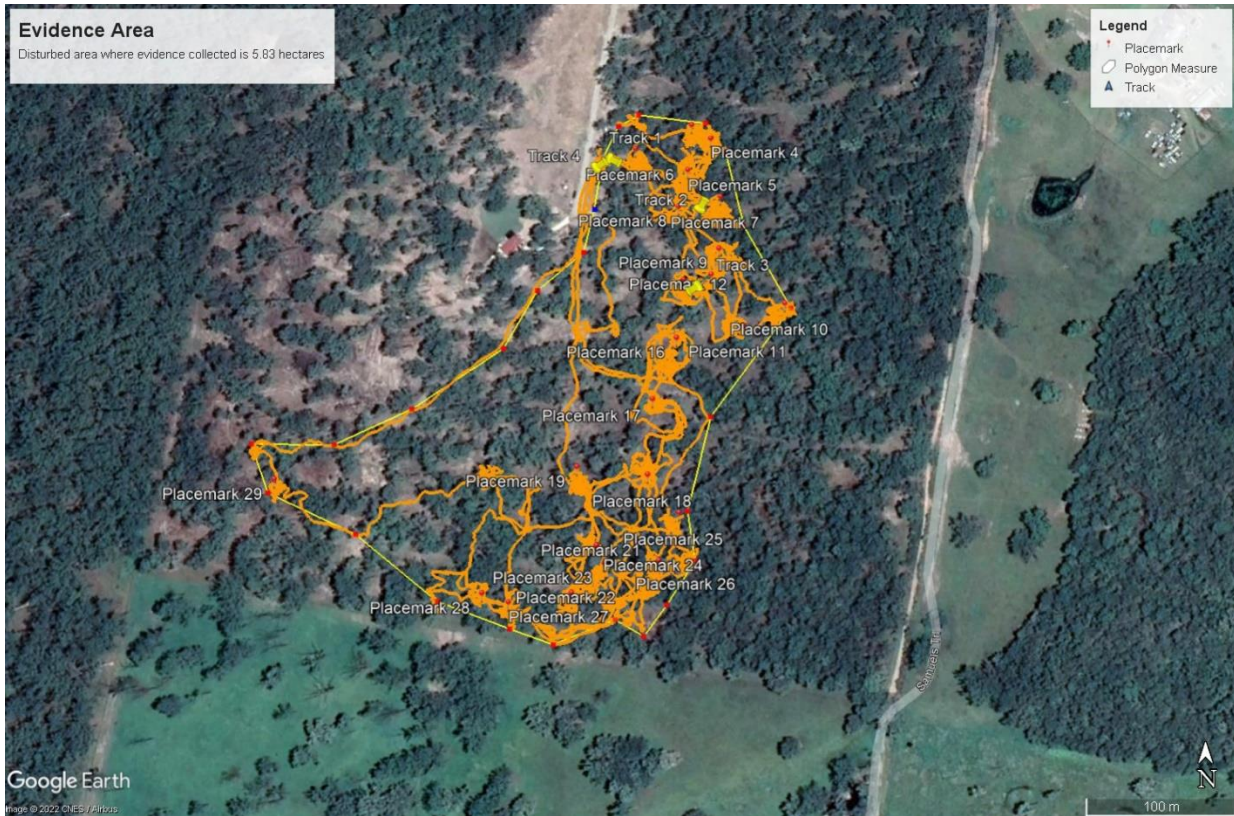


Figure 2: Specimens taken from vegetation piles within the area outlined in yellow. The size of the disturbed area is 5.83 hectares. The Placemarks are points where evidence was collected.

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Photo 3: *Allocasuarina* in windrow at the Property. Photo taken at Waypoint 4, Evidence Marker number 2 on 23 June 2021.

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Photo 4: *Allocasuarina* in windrow at the Property. Photo taken at Waypoint 6, Evidence Marker number 4 on 23 June 2021.

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Photo 5: Pushed over *Allocasuarina* at the Property with root ball intact. Photo taken from Waypoint 19 Evidence Marker number 10 on 29 June 2021.



Legend

-  Remediation_Area_FINAL
-  The Property
-  Watercourse

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

Property Owner: [REDACTED]
 Remediation Order: DOC22/
[REDACTED]

Base imagery captured during 2021 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 the NSW Land and Property Management Authority.

0 50 100 Meters
 Datum/Projection: GDA 1994 MGA Zone 56





Legend

-  Monitoring points
-  Remediation_Area_FINAL
-  The Property
-  Watercourse

**Attachment A - Map 2: Monitoring points
Biodiversity Conservation Act 2016 s11.15 Remediation Order**

Property Owner: [REDACTED]
 Remediation Order: DOC22/
 [REDACTED]

Base imagery captured during 2021 includes material © Nearmap.
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