



ORDER ISSUED TO:

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

Document Number: DOC23/794979

CCMS Case Ref. No.: 202304639

Issue Date: 08 January 2024

Property: [REDACTED]
[REDACTED]

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

BY registered post: RPP44 03900 05100 29940 13604; and

BY email to: [REDACTED]

Date of issue: 08/01/2024

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 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>.



Remediation Order

1. DEPARTMENT OF PLANNING AND ENVIRONMENT OBSERVATIONS

The Department is investigating a report of the unauthorised removal of approximately 10.05 ha of native vegetation on the Property between July 2022 and February 2023 (**Attachment 1**).

Under the *Local Land Services Act* (2013), it is an offence to clear native vegetation in a regulated rural area contrary to section 60N of the LLS Act.

Information and evidence obtained to date, including site inspection, a review of a biodiversity assessment, records of interview and a review of aerial photography confirm that damage occurred on the Property to native vegetation described as *Category 2 – Regulated Land*.

The damage caused to native vegetation comprised of the removal via excavator with subsequent planting of exotic species. 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 that of the available defences listed in Part 5A LLS Act and associated regulations, only vegetation removal for a farm track apply to this offence.

A full assessment of allowable activities listed under Schedule 5A of the LLS Act was conducted, along with consideration of codes under the *Land Management (Native Vegetation) Code* (2018). Beyond limited allowances for farm tracks, no additional exemptions or approvals were identified to permit clearing. At all material times, a person is responsible to comply with the relevant land management framework of NSW.

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 – Regulated Land*.

The Remediation Area is required to be redesignated as *Category 2 – Sensitive Regulated Land* pursuant to a full Category Explanation Report detailing and describing the categorisation of the land completed by The Department of Planning and Environment's Map Review Team.

2. REASONS FOR VIEW FORMED

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

- a) native vegetation on Category 2 - Regulated Land under Part 5A of the LLS Act

in or as a result of, the commission of an offence against section 60N of the LLS Act. In order to:

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

I, [REDACTED], Senior Team Leader of Compliance and Regulation (South East), order [REDACTED], [REDACTED] and [REDACTED] (**the Remediators**) 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 thirty (30) years from the date of this Order:

[REDACTED] holds delegated authority on behalf of the Environment Agency Head for the purposes of section 11.15 of the BC Act.

Remediation Order

3. REQUIREMENTS – WHAT YOU MUST DO TO COMPLY

In this Order, Remediation Area means the locations identified in **Attachment C**.

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

3.1 Duration

3.1.1 This Order is in place for thirty (30) years from the issue date.

3.2 General Requirements

Preparation of a Remediation Plan for “Areas 02, 03, 04, 05 and 06” in Attachment 1

- 3.2.1 **By 30 January 2024**, the Remediators must engage a bush regenerator for the purposes of preparing a Remediation plan.
- 3.2.2 **By 28 February 2024** you must submit a Remediation Plan for the Remediation Area to [REDACTED], Senior Team Leader Compliance and Regulation.
- 3.2.3 The Remediation Plan must be prepared by an experienced bush regenerator. A bush regenerator may be found here: <https://www.aabr.org.au/do/business-directory/>.
- 3.2.4 The Remediation Plan must demonstrate how the Remediator will restore the “Areas 02, 03, 04, 05 and 06” towards benchmark condition for the Vegetation Class of the South Eastern Highlands IBRA region Interim Biogeographic Regionalisation for Australia (IBRA) region which occur in the Remediation Area (**Table 1**).
- 3.2.5 The Remediation Plan must include restoration targets towards benchmark condition for each Vegetation Class for year one (1), five (5), ten (10), fifteen (15), twenty (20) and twenty-five (25), thirty (30) and ninety-nine (99).
- 3.2.6 The Remediator is responsible for the procurement of native vegetation to revegetate the Remediation Area, as per the Remediation Plan. All efforts should be made to source vegetation locally in order to reduce the risk of plant-shock and possible die off, post-planting.
- 3.2.7 All replanting must be completed by 28 February 2025, in accordance with the approved Remediation Plan.
- 3.2.8 The Remediation Plan must include a weed management plan which the Remediator must conduct annually for the duration of this Order.
- 3.2.8.1 Weeds may only be removed by low impact method such as hand removal or spot spraying with a handheld nozzle gun; and
- 3.2.8.2 It is not permitted to undertake aerial or broadscale/boom spraying (or similar method).
- 3.2.9 The Remediation Plan must be drafted for the Term.
- 3.2.10 The Remediation Plan is subject to the approval of the Department.
- 3.2.11 The Remediation Plan will remain in force unless amended or revoked by the Department.
- 3.2.12 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.
- 3.2.13 The approved Remediation Plan must be implemented by the Remediator(s) for the Term and will become an annexure to this Order.

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3.2.14 You must inform all purchasers of the land of this Order.

Replanting of native vegetation for “Areas 02, 03, 04, 05 and 06” in Attachment 1

3.2.15 By 28 February 2025 the remediator must have conducted all preliminary replanting efforts.

3.2.16 All native vegetation should be procured locally to reduce shock die-off.

3.2.17 Only vegetation listed in the Remediation Plan should be planted within the remediation areas.

Set aside requirements for “Area 01” in Attachment 1

3.2.18 Within 7 days of being issued this order, and for the duration of this order, for the area titled “Area 01” (**Attachment 1**) vegetation is to be set aside for the purposes of allowing natural maturing of existing vegetation to provide continuous forest for native wildlife. The Remediator must:

3.2.18.1 Immediately upon issuance of this order, abate human disturbance to the Remediation Area except in accordance with written approval of the Department;

3.2.18.2 No not remove **any** native vegetation, for any purpose;

3.2.18.3 Maintain all existing fencing to a standard that excludes stock (no new fences are required so long as stock can be excluded using the existing fences);

3.2.18.4 If at any time if any exotic species, commercial crop or non-native plant species is found within any remediation area, the remediator must destroy all such exotic species, commercial crops or non-native plant species by either spot application of herbicide or by removal by non-mechanised means as soon as practicable and in any event within 14 days of becoming aware.

3.2.18.5 Vehicle and heavy machinery use will cease except for along preestablished fire trails and rural tracks;

3.2.18.6 Not revegetate any exotic species;

3.2.18.7 Not cultivate; crop or harvest;

3.2.18.8 Not extract water; and

3.2.18.9 Construction, development, or land use change must not occur without the written consent of the Department.

3.3 Reporting Requirements

3.3.1 By 31/12/2024 you must submit a completed Annual Monitoring Report for the year of 2024.

3.3.2 By 30 November of every subsequent year this Order is in place for, you must submit a completed report by 30th November. All reports must be scanned and emailed to rog.south@environment.nsw.gov.au or sent by Registered Post to:

Reference: CCMS 202304639
Senior Team Leader, Compliance and Regulation
Department of Planning and Environment
PO Box 514
Wollongong NSW 2520

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Guidance for annual monitoring report and record keeping:

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 Areas
- The proposed date(s) of that work.

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.

4. AN EXAMPLE OF HOW YOU CAN COMPLY

One way of achieving compliance with this Order would be to:

1. Do not introduce livestock to the Remediation Area.
2. Provide the Remediation Plan prepared by approved ecologist to the Department for review and acceptance prior to beginning revegetation works.
3. Engage an approved ecologist, to prepare a Remediation Plan which is subject to review by the Department.
4. Procure and plant native vegetation accordance with this Remediation Plan.
5. Weed manage and water vegetation, as required by the Remediation Plan, or engage an approved third party to undertake these activities.
6. Controlling weeds by selectively poisoning and manually removing weeds for the remainder of this Order, as required by the VMP.
7. Prevent human disturbances to the remediation area for the duration of the Order, with the exception of work required for the management of weeds.
8. Send in completed monitoring report by the due date and every year thereafter as described in section 3.3.

Remediation Order

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>
Remediation Area	Indicated in Attachment C .
The Remediator	██████████ and ██████████ and ██████████.
Reporting period	Reporting period Means each annual period from the commencement of this Order
Term	Means 30 (thirty) years
The Property	Known as ██████████ comprised of ██████████ on ██████████ shown in Attachment 1 .
Weed	Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> .

Table 1: Benchmark condition for the Southern Tableland Dry Sclerophyll Forests vegetation class of the South Eastern Highlands IBRA region

Benchmark attribute	Benchmark value	Unit or measure
Tree Richness	5	The number of native tree species within a plot of area 0.04 ha
Shrub Richness	11	The number of native shrub species within a plot of area 0.04 ha
Grass and Grass like richness	7	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	1	The number of native fern species within a plot of area 0.04 ha
Other richness	2	The number of native species within the other growth form group within a plot of area 0.04 ha
Tree cover	43.0	The total foliage cover of native tree species within a plot of area 0.04 ha
Shrub cover	17.0	The total foliage cover of shrub species within a plot of area 0.04 ha
Grass and Grass like cover	27.0	The total foliage cover of native grass and grass-like species within a plot of area 0.04 ha
Forb cover	7.0	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	0.0	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	87	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



Remediation Order

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 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.

.....
[Redacted Signature]

Senior Team Leader
Compliance and Regulation – South East
(by Delegation)

Attachment:

1. Map of the Remediation Areas.

Remediation Order

Attachment 1: Remediation Areas

