

Remediation Order

ORDER ISSUED TO:

[REDACTED]

Order Number: 202305894-1
Case Reference Number: 202305894
Issue Date: 25 June 2024
Property: [REDACTED]

By: Email and Registered Post.

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

Who are we: The Department of Climate Change, Energy, the Environment and Water (the **Department**) has responsibilities regarding the administration and enforcement of the *Biodiversity Conservation Act 2016* (NSW) (**BC Act**) and its associated Regulations, and responsibilities regarding the enforcement of Part 5A of the *Local Land Services Act 2013* (NSW) (**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**) 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>.

BACKGROUND

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- A. [REDACTED] holds the position of Senior Team Leader Compliance and Regulation, South West Branch, Biodiversity and Conservation Division within the Department.
- B. [REDACTED] holds delegated authority on behalf of the Agency Head of the Department for the purposes of section 11.15 of the BC Act.
- C. [REDACTED] and [REDACTED] are the owners on title (**Land holder**) of the land parcel [REDACTED] which forms part of the property at [REDACTED] (**the Property**) upon which the clearing of native vegetation contrary to section 60N of the LLS Act occurred.

BASIS FOR ISSUING REMEDIATION ORDER

- D. The Department has investigated an allegation relating to the unauthorised clearing of native vegetation in a regulated rural area on the Property between the November 2023 and December 2023.
- E. Under section 60N of the LLS Act, it is an offence to clear native vegetation in a regulated rural area.
- F. In December 2023, the Department received information concerning changes in vegetation on the Property.
- G. The Department's investigation determined that [REDACTED] permitted the clearing of 2.65ha of native vegetation on the Property between the 22nd November 2023 and 24th November 2023. The clearing was conducted by a contractor on behalf of the Land holder who had not provided authorisation from relevant agencies that clearing was permitted to be undertaken. [REDACTED] had not consulted appropriate Departments prior to commencement of the clearing and had no permission to clear native vegetation.
- H. [REDACTED] confirmed to the Department via a statutory notice that [REDACTED] did not consult Local Land Services or obtain a Land Management Certificate to clear paddock trees in a regulated rural area.
- I. The Department's investigation found the clearing was conducted contrary to section 60N of the LLS Act, and none of the available defences listed in the LLS Act and associated Regulations apply. An Official Caution Letter was issued by the Department to [REDACTED] and [REDACTED] on 3 April 2024.
- J. The work required by this Order provides for the remediation of damage sustained to the Property where the clearing of native vegetation occurred contrary to section 60N of the LLS Act and section 2.4 of the BC Act.
- K. Section 11.16(2) of the BC Act requires you to carry out the remediation work required by this Order.

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OPINION

L. I, [REDACTED] Senior Team Leader Compliance and Regulation, South West Branch, Biodiversity and Conservation Division, am satisfied that the following has been damaged:

- a) Native vegetation on Category 2- Regulated land under Part 5A of the LLS Act, namely 2.65 hectares of paddock trees numbering 53 paddock trees in total.

ORDER TO CARRY OUT REMEDIATION WORK

M. In order to mitigate the damage to the area concerned:

I, [REDACTED] Senior Team Leader Compliance and Regulation, South West Branch, Biodiversity and Conservation Division, order [REDACTED] and [REDACTED] (**the Remediators**) to carry out the following remediation work on the Property for a period of **fifteen (15) years** from the issue date of this Order (**the Term**).

1 REMEDIATION AREA

- 1.1 In this Order, Remediation Area means the area located on the Property shown schematically on the map in Attachment 1 outlined and hatched in Yellow (Remediation Areas 1-4).
- 1.2 The Remediation Area is located within [REDACTED] of the Property.
- 1.3 The Remediation Area contains remnant native vegetation that is currently categorised as Category-2 Regulated Land on the Draft Native Vegetation Regulatory (NVR) Map. All areas within Areas 1-4 on the associated map, including revegetation of the sites, will be re categorised as Category-2 Sensitive Regulated Land upon commencement and for the duration of the Remediation Order. The Remediators will not clear any native vegetation from these areas.
- 1.4 Within two (2) months of the Issue Date of this Order) you must submit a Remediation Plan for the Remediation Area to the Team Leader Compliance and Regulation, South West.
- 1.5 The Remediation Plan is subject to the approval of the Department. No works are to commence until the proposed Remediation Plan submitted by the Remediator has been approved in writing by the Department.
- 1.6 The Remediation Plan must be prepared by an accredited person in accordance with 6.10 of the BC Act. A public register is available:
<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>.
- 1.7 The Remediation Plan must demonstrate how the Remediator will remediate Areas 1 – 4 totalling 11.09ha, consistent with requirements of Part 6 Division 1 of the Land Management Native Vegetation Code 2018
- 1.8 The land holder must maintain within the Remediation Areas all existing native vegetation. The remaining land comprising 50% or more of the Remediation Area must be planted

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and maintained with tube stock of native vegetation species at a 5:1 ratio density to achieve overstorey and mid storey cover equivalent to the Plant Community Type (PCT) for the site.

- 1.9 Species type must be consistent with the PCT identified in the Coleambally region as PCT 16 Black Box grassy open woodland rarely flooded depressions in south western NSW (mainly Riverina Bioregion and Murray Darling Depression Bioregion).
- 1.10 The Remediation Area is 11.09 hectares in total, excluding the six (6) metre fence line Allowable Activity Buffer as shown on the map Annexure A.
- 1.11 The Remediation Plan must be prepared for the term of the Order. The Remediation Plan is subject to the approval of the Department.
- 1.12 The Remediation Plan will remain in force unless amended or revoked by the Department.
- 1.13 The Remediation Plan must include fencing of Remediation Areas 1-4 with access gates affixed.
- 1.14 The Remediation Areas must be cleared of all farming objects including concrete troughs, feeders, gates, fencing materials, iron and any other items used for farming including previously erected yards.
- 1.15 The Remediator is permitted to build a dam on the edge of Remediation Area Two provided no existing native vegetation is removed. The Remediators will be in breach of the Remediation Order conditions if any native vegetation is removed.
- 1.16 In accordance with NSW Department of Primary Industries (DPI) [Best Practice Management Guides](#), the Remediation Plan must demonstrate effective management of weeds, exotic species, non-native plants, and commercial crops within the Remediation Area for the Term of the Order. Only selective methods (non-mechanised) of poisoning and/or manual removal are to be used.
- 1.17 The Remediator must notify the Department as soon as practicable and in any event within fourteen (14) days of becoming aware of any incident, event or activity that causes an adverse impact on the Remediation Area or adversely affects the health of the Remediation Area. This may include:
 - a) fire,
 - b) flood, or
 - c) any other incident, event or activity that may adversely impact or affect the health of the Remediation Area.
- 1.18 The Remediator is responsible for all costs associated with implementing and complying with the conditions of this Order.
- 1.19 The Order will remain in force for the Term of the Order unless, amended, revoked, or varied by the Department.

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- 1.20 The Remediator must provide reasonable access to staff of the Department for the purposes of administering this Order which includes providing access to inspect the Remediation Area as required.
- 1.21 By DD/MM/YYYY (14 days after the date of the Order) 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.

2 MONITORING AND REPORTING REQUIREMENTS

- 2.1 The Remediator must notify the Department when the initial works associated with the Order have been completed. The Remediator must complete and submit the Initial Works Declaration (IWD) provided by the Department at Attachment-2 of this Order. The Remediator must submit the IWD to the Team Leader Compliance and Regulation – South West within ten (10) weeks from the date of issue of this Order.
- 2.2 The Remediator must inspect the Remediation Area for the purposes of determining:
- The presence of weeds, exotic species, non-native plants, and commercial crops within the Remediation Area,
 - The presence of pest herbivores within the Remediation Area,
 - The presence and impact of stock within the Remediation Area,
 - The condition and serviceability of fencing or marker posts, and
 - Whether any notifiable incidents, events or activities have occurred within the Remediation Area.
- 2.3 The Remediator must complete and submit an Annual Monitoring Report (AMR) each calendar year for the Term of the Order. The AMR must be received by the Department by the 14th day of July each calendar year following the issuance of the Order. The AMR must be posted or emailed to the Team Leader Compliance and Regulation, South West Branch by the date specified. Failure to do so may result in compliance action. A copy of the AMR template has been provided at Attachment-3 of this Order.
- 2.4 The Remediator must inform any future purchasers of the land of this Order.
- 2.5 The Remediation Order must be included in any future contract of sale for [REDACTED]
- 2.6 The Remediator must notify the Team Leader Compliance and Regulation – South West within fourteen (14) days of settlement of sale of the land subject to this Order.
- 2.7 At any time should the Remediator need clarification or explanation of the requirements and obligations associated with this Order, the Remediator should contact the Team Leader Compliance and Regulation – South West.
- 2.8 The Remediator must submit all reports and correspondence relating to this Order to the Team Leader Compliance and Regulation – South West:
- a) By Registered Post to:
- Team Leader Compliance and Regulation – South West
NSW Department of Climate Change, Energy, the Environment and Water
PO Box 5336 Wagga Wagga NSW 2650

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or

b) By email to: compliance.southwest@environment.nsw.gov.au

3 RECORD KEEPING

3.1 The Remediator must retain copies of all records associated with this Order for the Term of the Order. All records are to be true, accurate, correct and in legible form.

4 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 Climate Change, Energy, the Environment and Water.
Exotic species or Non-Native Species	Means species introduced from outside of the area concerned; in the case of New South Wales, from overseas and/or interstate. Note: The source of this definition is Harden, G.W. ed. 1990-2002. <i>Flora of New South Wales: Volumes 1 – 4</i> , University of NSW Press.
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	Means this document: A Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i> .
Pest herbivores	Means hares, rabbits, and goats but does not include livestock.
Remediator	Means the person named in this Order and who is responsible for adhering to and complying with the Order.
Remediation Area	Means the areas shown on the attached maps to this Order and located within the parcels of land identified by this Order.

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Reporting Period	Means each annual reporting period (1 July to 30 June) from the commencement of this Order and for the Term of this Order.
Stock	Means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, pigs and goats). It does not include native wildlife.
Suitably qualified person	An accredited person in accordance with section 6.10 of the BC Act
Term	Means the duration of the Order from the date of issue.
The Property	Means the land parcels identified in this Order that are subject to the conditions of the Order.
Weed	Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> .

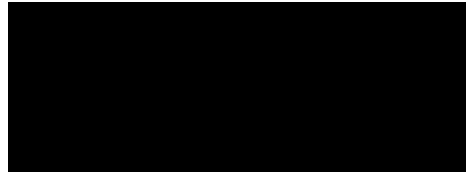
WARNING AND INFORMATION ABOUT THIS ORDER

- 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. The maximum penalty that a court may impose for this offence is:
 - for a corporation, \$660,000 plus \$66,000 for each day the offence continues, and
 - for an individual, \$132,000 plus \$13,200 for each day the offence continues.
- If you fail to comply with this Order the Agency Head of the Department or his 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).
- 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 11.23(1) of the BC Act, if you are aggrieved by the decision to make this Order you may appeal to the Land and Environment Court within 30 days of this Order being served on you. However, even if an appeal is lodged, you must comply with this Order, unless the Court orders otherwise.
- 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.



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- Words and expressions have the same meaning as words and expressions used in the BC Act or Part 5A of the *Local Land Services Act 2013* (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). A Remediation Order is separate to any potential enforcement action.



Senior Team Leader Compliance and Regulation
Biodiversity and Conservation Division-South West
NSW Department of Climate Change, Energy, the

Environment and Water

(by Delegation)

Attachments to Order:

1. Annexure A Map of the Remediation Area
2. Initial Works Declaration
3. Annual Monitoring Report Template



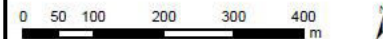
Annexure A
Map of the Remediation Area
Biodiversity Conservation Act
2016
s11.15 Remediation Order

Property [Redacted]
Owner: [Redacted]
Property Address: [Redacted]
Lot/DP: [Redacted]
County: Boyd
Parish: Eulo
LGA: Murrumbidgee

Area: 11.09 ha
110929.31 sq m

Legend

-  Buffer - 6m
-  Remediation Area
-  The Property
-  Lot / Deposited Plan (DP)
-  Watercourse



Base imagery captured on the March 2024 includes material © Planet.

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 55
Date: 23 April 2024
Plan No: S11.15_202305894_V1



Northing

Easting