



**ORDER ISSUED TO:**



Email



Order Number: DOC21/854341  
CCMS Case Ref. No.: 201901109  
Issue Date: [REDACTED] 9 March 2022  
Property: [REDACTED]

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

**BY: Registered Post and Email to** [REDACTED] **C/O** [REDACTED]  
[REDACTED]

**Date of issue: 9 March 2022**

**Who are we:** The Department of Planning, Industry and Environment has responsibilities regarding the administration and enforcement of the *Biodiversity Conservation Act 2016 (NSW)* (**the BC Act**) and its associated Regulations.

**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, Industry 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, 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



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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>.

## 1. DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT OBSERVATIONS

The Department is investigating harm to threatened species on the Property between 13 December 2019 and 17 December 2019.

Under Part 2 Division 1 Section 2.2 and 2.4 of the *Biodiversity Conservation Act 2016*, it is an offence to pick plants and damage the habitat of a threatened species or an ecological community.

Information and evidence obtained to date, including three site inspections, interviews, documents obtained from Central Coast Council and from the Department's archives, photos, information obtained through Notices to Provide, NearMap photographs and other public websites, information obtained from the Rural Fire Service, and documents obtained from the contractor, [REDACTED], indicate that damage occurred on the Property to individuals of the Somersby mintbush and the spreading guinea-flower, and to the habitat of the Somersby mintbush and the spreading guinea-flower between the 13 December 2019 and the 17 December 2019. The damage was caused to the Somersby mintbush, the spreading guinea-flower, and the habitat of the Somersby mintbush and the spreading guinea-flower when the property was cleared, and the vegetation mulched. Information and evidence obtained to date also indicates that the damage occurred in or as a result of clearing of native vegetation without development consent within the meaning of the *Environmental Planning and Assessment Act 1979* and 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.

## 2. REASONS FOR VIEW FORMED

I, [REDACTED], Senior Team Leader, Compliance & Regulation, Hunter Central Coast, am satisfied that the following has been damaged.

- a) plant or animal that is of or is part of a threatened species or threatened ecological community on the Property, namely, the Somersby mintbush and the spreading guinea-flower.
- b) habitat of a threatened species or threatened ecological community on the Property, namely, the Somersby mintbush and the spreading guinea-flower.

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In or as a result of the commission of an offence against Part 2 Division 1 Section 2.2 and 2.4 of the *Biodiversity Conservation Act 2016*.

In order to:

- a) control, abate or mitigate the damage to the area, habitat, plant, or vegetation concerned; and
- b) maintain, remediate or restore the damaged area, habitat, plant, or vegetation concerned;

I, [REDACTED], Senior Team Leader Compliance and Regulation, Hunter Central Coast, 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 seven (7) years from the date of this Order:

[REDACTED], Senior Team Leader, Compliance and Regulation, Hunter Central Coast 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 [REDACTED] – refer to the attached map (Attachment 1).

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

### 3.1 General Requirements

- 3.1.1 Stock must be excluded from the Remediation Area for the term of this Order.
- 3.1.2 For the first 2 years of the Term, every 3 months you must suppress and control weeds in the Remediation Area by manual removal. For the remainder of the Term, every 6 months you must suppress and control weeds in the Remediation Area by manual removal. Weeds include but are not limited to: *Andropogon virginicus* (Whiskey Grass); *Axonopus fissifolius* (Common Carpet Grass); *Cortaderia selloana* (Pampas Grass); *Gomphocarpus sp.* (Cotton bush/Balloon plant); *Hypochaeris radicata* (Flat weed); *Paspalum dilatatum* (Dallas grass); *Senecio madagascariensis* (Fireweed or Madagascar ragwort). All weeds are to be removed from the Remediation Area and be permanently disposed of so as not to regenerate.
- 3.1.3 [Deleted]
- 3.1.4 By 28/03/2022 you must erect signage in accordance with the design at Attachment 2 so that any person entering the Remediation Area becomes aware of the Remediation Area. This signage must be replaced, if found to be damaged or removed, for the term of this Order.



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- 3.1.5 You must inform all purchasers of the land of this Order.
- 3.1.6 You must notify the Environmental Agency Head within 14 days if you sell or transfer ownership of the land subject to this Order.
- 3.1.7 No mulch is to be imported into the remediation area.
- 3.1.8 No structures or temporary structures shall be installed in the remediation area for the term of the remediation order.

NOTE TO 3.1.7 AND 3.1.8: These actions may constitute a fresh offence if they are undertaken after the term of the order expires.

## 3.2 Reporting Requirements

- 3.2.1 By 31/01/2023 you must submit a letter or email outlining your compliance with 3.1 General Requirements of the Remediation Order and every year on the 31/01 for the duration of the Order. Send letters or email to **hunter.compliance@environment.nsw.gov.au** or sent by Registered Post to:

Senior Team Leader Compliance and Regulation  
Biodiversity and Conservation Division  
Department of Planning, Industry and Environment  
Locked Bag 1002  
DANGAR NSW 2309

## DEFINITIONS

In this Order, the following definitions apply:



# Remediation Order

| 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, Industry and Environment.  |
| Equally           | Means to the same extent. Example: if 200 stems of 4 species are required, each species should have 50 stems   |
| 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  | Means 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  |
| Stock             | Stock means cattle, horses, sheep, goats, camels, alpacas, llamas, pigs, deer, ostriches, emus or any other domesticated animal.                                   |
| Term              | Means 7 years  |
| The Property      | [REDACTED]   |
| Weed              | Means a plant that is a pest as defined by section 15 of the NSW <i>Biosecurity Act 2015</i> .   |

## 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).



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- 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.
- DPIE 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.

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Senior Team Leader, Compliance and Regulation  
Hunter Central Coast  
(by Delegation)

**Attachment:**



# Remediation Order



## 1. Map of the Remediation Area



Attachment:

# Remediation Order

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## 2. Design of Sign

This is a remediation area maintained  
in accordance with a remediation order  
issued under section 11.15 of the  
*Biodiversity Conservation Act 2016*

[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)