

# Remediation Order



## ORDER ISSUED TO:

[Redacted recipient information]

Notice Number: DOC19/251192  
Case Reference Number: 13726-2016  
Date: 9 April 2019

By email: C/- [Redacted email address]

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

### BACKGROUND

- A. The Office of Environment and Heritage (**OEH**) has responsibility for the enforcement of the now repealed *Native Vegetation Act 2003 (NV Act)*.
- B. The NV Act was repealed on 25 August 2017. However, pursuant to clause 58 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017 (BC (S&T) Regulation)*, the repeal of the NV Act does not affect any offence against that Act, or the regulations under that Act, that was committed before the repeal. The provisions of the NV Act relating to proceedings for an offence, issuing of penalty notices for an offence, and the making of a court order in relation to an offence continue to apply.
- C. Pursuant to clause 54 of the BC (S&T) Regulation, remediation orders under Division 4 of Part 11 of the *Biodiversity Conservation Act 2016 (BC Act)* may be issued in relation to damage in or as a result of the commission of an offence under the NV Act committed before 25 August 2017.
- D. Pursuant to section 11.15 of the BC Act, if the Chief Executive of OEH is satisfied that damage has occurred in or as a result of the commission of an offence against the NV Act, the Chief Executive may order a person to carry out specified remediation work in a specified manner and within a specified time.
- E. Senior Team Leaders, Compliance and Regulation, Conservation and Regional Delivery hold delegated authority on behalf of the Chief Executive of OEH for the purposes of section 11.15 of the BC Act.
- F. [Redacted] holds the position of Senior Team Leader, Compliance and Regulation - North West, Conservation and Regional Delivery, within OEH.
- G. Mr [Redacted], Mr [Redacted] and Mr [Redacted] are current directors of [Redacted]. This company owns [Redacted] partly outlined in **Attachment A) (the Property)**.

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## BASIS FOR ISSUING REMEDIATION ORDER

- H. OEH has investigated the clearing of remnant native vegetation from Lot [REDACTED] DP [REDACTED] that occurred between 10 July 2013 and 30 December 2013.
- I. Information obtained to date; including, expert examination of satellite images and aerial photographs, associated vegetation mapping supports that approximately 333.75 hectares of native vegetation was removed from the property.
- J. Expert ecologists have identified that the clearing affected Plant Community Type 40 *Coolabah open woodland wetland with chenopod/grassy ground cover on grey and brown clay floodplains* (PCT 40) which is associated with the *Coolibah-Black Box Woodland in the Darling Riverine Plains, Brigalow Belt South, Cobar Penepplain and Mulga Lands Bioregion* Endangered Ecological Community.
- K. Under the NV Act, it was an offence pursuant to section 12 that native vegetation be cleared; except in accordance with development consent granted in accordance with the *Environmental Planning and Assessment Act 1979* (EP&A Act), or a property vegetation plan issued under the NV Act.
- L. The work required by this order provides for the remediation and restoration of native vegetation removed from the Areas of interest.

## OPINION

- M. I, [REDACTED], Senior Team Leader, Compliance and Regulation - North West, am satisfied that remnant native vegetation has been damaged because of the commission of an offence against section 12 of the NV Act.

## ORDER TO CARRY OUT REMEDIATION WORK

- N. I, [REDACTED], Senior Team Leader, Compliance and Regulation - North West, order Mr [REDACTED] (the **Remediators**) to prepare and implement a **Remediation Plan** to restore the **Remediation Area**.

### The Remediation Plan:

- i. Must be prepared by a suitably qualified person.
- ii. Must demonstrate how the remediators will restore the Remediation Area to PCT 40 at the benchmark conditions outlined in **Table 1**.
- iii. Must be drafted for a term of 20 years.
- iv. Must be submitted to STL, Compliance and Regulation - North West within 60 days from the date of this order for consideration.
- v. Is subject to the approval of OEH.
- vi. Will remain in force unless amended or revoked by OEH.
- vii. Must include a monitoring and reporting regime where records are made by the landholder and an annual report is provided to OEH.
- viii. The approved Remediation Plan will become an annexure to this order.

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**Table 1: Minimum benchmark conditions for the Remediation Area over time**

Benchmark	Year 5	Year 10	Year 15	Year 20
Native tree species richness	2	3	3	3
Native shrub species richness	3	4	5	6
Native grass species richness	2	3	4	4
Native forb species richness	4	5	6	7
Native tree cover	5%	8%	10%	12%
Native shrub cover	5%	8%	10%	12%
Native grass cover	2%	4%	6%	8%
Litter cover	5%	10%	15%	20%
Exotic flora cover	<15%	<10%	<5%	<5%

O. Any correspondence required by this order can be sent by the following methods:

- By post or courier to:  
 Senior Team Leader  
 OEH Compliance and Regulation  
 Level 1, 52 Wingewarra Street  
 P.O. Box 2111  
 Dubbo NSW 2830

**OR**

- By email to: [ROG.North@environment.nsw.gov.au](mailto:ROG.North@environment.nsw.gov.au) - Marked to the attention of the Senior Team Leader, Compliance and Regulation.

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## DEFINITIONS

In this Order, the following definitions apply:

Term	Definition
Areas of interest	Areas where native vegetation was cleared in contravention of section 12 of the <i>Native Vegetation Act 2003</i> .
BC (S&T) Regulation	<i>Biodiversity Conservation (Savings and Transitional) Regulation 2017</i>
BC Act	<i>Biodiversity Conservation Act 2016</i>
Clearing	Has the same meaning as defined in the <i>Native Vegetation Act 2003</i>
Endangered Ecological Community	Has the same meaning as defined in the <i>Biodiversity Conservation Act 2016</i>
Native vegetation	Has the same meaning as defined in the <i>Native Vegetation Act 2003</i>
NV Act	<i>Native Vegetation Act 2003</i>
OEH	The NSW Government Office of Environment and Heritage
Order	This document; a Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i>
Remediation Area	Means the area of 320 ha located on the Property identified in green highlight on the map in <b>Attachment A</b> .
Remediators	Mr [REDACTED] [REDACTED]
Reporting period	Means each annual period from the commencement of this Order
Suitably qualified person	A person with appropriate qualifications, training and at least five (5) years of experience relevant to the nominated subject matters to give authoritative assessment, advice and analysis.
The Property	[REDACTED]

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## 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.
- If you fail to comply with this Order the Chief Executive of OEHL or his delegate may authorise any other person to enter the Properties 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.
- OEHL 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 *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 & Regulation North West  
Conservation & Regional Delivery

(by Delegation)

**Attachments: A – Map of the Remediation Area**

**Legend**

 Remediation Area (320 ha)

 [Redacted]

 Cadastre

ADS40 -Wee Waa - 24/05/2016

**"Attachment A"  
Remediation Area**

Copyright NSW Office of Environment and Heritage (OEH).  
This map is not guaranteed to be free from error or omission.  
OEH and its employees disclaim liability for any act done on the information in the map and any  
consequences of such acts or omissions.

Map prepared by Rowan Murphy on 26/03/2019



Datum / Projection: NSW Lambert  
Scale 1 : 50 000



**Office of  
Environment  
& Heritage**