

Remediation Order

ORDER ISSUED TO:

[REDACTED]
[REDACTED]
[REDACTED]
c/- [REDACTED] & [REDACTED]

Notice No.: 201900469-02
CCMS Case Ref. No.: 201900469
Date: 9th December 2020

BY email to [REDACTED]

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

BACKGROUND

- A. The Department of Planning, Industry and Environment (**the Department**) has responsibility for the enforcement of the now repealed *Native Vegetation Act 2003 (NV Act)*.
- B. The NV Act was repealed on 25 August 2017.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, and 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 Secretary of the Department is satisfied that damage has occurred in or as a result of the commission of an offence against the NV Act, the Secretary may order a person to carry out specified remediation work in a specified manner and within a specified time.
- E. [REDACTED] holds the position of Director - South West, Biodiversity, Conservation & Science Directorate within the Department.
- F. [REDACTED] holds the delegated authority on behalf of the Secretary of the Department for the purposes of section 11.15 of the BC Act.
- G. [REDACTED] is the current owner of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], at [REDACTED] [REDACTED] (the Property).

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BASIS FOR ISSUING REMEDIATION ORDER

- H. The Department has investigated a report of clearing of native vegetation on the Property between 2 April 2014 and 24 August 2017.
- I. Under section 12 of the NV Act, it was an offence to clear native vegetation except in accordance with a development consent or a property vegetation plan.
- J. Information and evidence obtained to date, including a review of satellite imagery, Plant Community Type (**PCT**) mapping and an assessment of contiguous vegetation adjacent to that cleared indicates that 230 hectares of native vegetation was cleared on the Property between 2 April 2014 and 24 August 2017.
- K. Information and evidence obtained to date also indicates that none of the available defences listed in the NV Act and associated regulations in relation to the offence apply.
- L. [REDACTED], as the landholder of the Property is considered responsible for the clearing under section 44 of the NV Act.
- M. The works required by this Remediation Order (**Order**) provide for the enhancement of existing remnant native vegetation to offset the cleared area.

OPINION

- N. I, [REDACTED], Director - South West, Biodiversity, Conservation & Science Directorate am satisfied that remnant native vegetation has been damaged in or as a result of the commission of an offence against section 12 of the NV Act.

ORDER TO CARRY OUT REMEDIATION WORK

- O. In order to offset the cleared vegetation concerned through enhancement of existing native vegetation; I, [REDACTED], Director - South West, Biodiversity, Conservation & Science Directorate, 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 20 years from the date of this Order.

1 REMEDIATION AREA

- 1.1 In this Order, Remediation Area means the Green area labelled 'Remediation Areas' on **Attachment A** – Remediation Area Map.
- 1.2 This Order requires the Remediator to inform the Secretary of the Department of any change in the ownership or occupancy of the Property at least 21 days prior to any such change occurring.
- 1.3 The Remediator must provide reasonable access to staff of the Department for the purposes of administering this Order. The Department must provide reasonable notice of an intention to inspect the Remediation Area.
- 1.4 All staff, contractors and other visitors entering the Remediation Area are to be made aware of this Order and instructed to comply with its requirements.

2 REMEDIATION OUTCOMES

- 2.1 To enhance native vegetation within the Remediation Area.
- 2.2 To enhance ecological function and biodiversity values within the Remediation Area.

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3 DURATION

- 3.1 This Order will be in force for 20 years; unless varied or revoked in accordance with the BC Act. If requested by the Remediator, the Department will inspect the Remediation Area after ten years to determine whether the remediation outcomes have been achieved and if so, will reconsider the duration of the of the Order.

4 REMEDIATION COSTS

- 4.1 The Remediator must bear all costs associated with implementing the conditions of this Order.

5 REMEDIATION WORK

Remediation

- 5.1 Native vegetation is to be allowed to regenerate in the Remediation Area as the priority method of remediation unless otherwise specified under this Order. To protect regenerating vegetation and threatened species habitat the following activities are prohibited within the Remediation Area:
- a) Clearing of native vegetation.
 - b) Disturbance of vegetation including grazing by stock.
 - c) Removal of fallen timber.
 - d) Cultivation.
 - e) Construction of infrastructure.
 - f) Aerial spraying.
- 5.2 If after a period of 4 years, the Department is not satisfied with the enhancement of the Remediation Areas through natural regeneration, the Department may require the remediator to revegetate areas with endemic species as outlined in **Attachment B**.

Stock

- 5.3 The Remediator must implement measures to keep the Remediation Area free of stock, except in accordance with a strategic grazing regime approved by the Department.

Exotic plants (weed management)

- 5.4 The Remediator must implement measures to ensure weed species do not have a significant impact on the biodiversity values of the Remediation Area. Implementation of these measures must be commenced within 60 days of the issue of this Order.
- 5.5 Without limiting this clause, the Remediator must ensure that exotic plants occupy less than 5% of total groundcover of the Remediation Area. Control measures permitted include:
- a) Spot application of herbicide.
 - b) Manual removal.
 - c) Biological control.

Pest animals

- 5.6 The Remediator must implement measures to reduce the density of pest animals to a level that is not having a significant impact on the biodiversity values of the Remediation Area and maintain densities at or below that level using any approved means. Implementation of these measures must be commenced within 60 days of the issue of this Order.

Soil disturbance

- 5.7 Soil disturbance in the Remediation Area is prohibited, except in accordance with written approval from the Department or if specified within this Order.

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Fire

- 5.8 The Remediator must implement measures to prevent fire occurring within the Remediation Area and to suppress and extinguish any fire that does occur. Implementation of these measures must be within 60 days of the issue of this Order and not contravene any other condition of the Order.

Hazards, chemical and waste

- 5.9 The use of insecticides, herbicides and soil ameliorants (e.g. gypsum, lime) is not permitted on the Remediation Area except as approved by the Department under this Order.
- 5.10 Waste is not to be placed, stored or kept in the Remediation Area.

Monitoring to determine establishment and growth

- 5.11 The Remediator must inspect the Remediation Area two times in each year, with a minimum of 150 days between each inspection for the purpose of determining:
- The percentage of groundcover that is comprised of exotic plants.
 - The number of native trees regenerating per hectare.
 - If any stock has impacted the Remediation Area.
 - The presence of pest animals in the Remediation Area.
 - If there is an increased risk of wildfire within the Remediation Area.

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6 RECORDS

- 6.1 The following records must be made by the Remediator for all inspections (in the form provided in **Attachment C – Monitoring Report**):
- The date(s) on which the inspection was undertaken.
 - The name of the person who undertook the inspection.
 - The percentage of groundcover that is comprised of exotic plants.
 - The number of native trees regenerating per hectare.
 - If any stock has impacted the Remediation Area.
 - The presence of pest animals in the Remediation Area.
 - If there is an increased risk of wildfire within the Remediation Area.
- 6.2 The following records must be kept by the Remediator for any work undertaken as a result of any inspection(s):
- Details of any required work within the Remediation Area.
 - The date(s) this work was undertaken.
 - The date on which this work was completed.
- 6.3 All records required to be kept by this Order must be:
- True, accurate and correct.
 - In a legible form.
 - Kept for the duration of the Remediation Order.

7 REPORTING

- 7.1 The Remediator must prepare and submit an **Initial Works Report** to the Department no later than six weeks after the issue of this Order. This must contain:
- Confirmation of the exclusion of stock and dates of any actions taken to remove stock.
 - The percentage of ground cover that is comprised of weeds.
 - An assessment of pest animal presence within the Remediation Area.
 - Advice of any completed, required, or proposed work within the Remediation Area.
- 7.2 The Remediator must prepare and submit a **Monitoring Report** to the Department by 12 months after issue of this Remediation Order and annually thereafter.
- 7.3 Reports must be submitted to the Department using any of the following methods:
- By mail, courier or hand to:
Senior Team Leader
Compliance and Regulation, North West
Biodiversity, Conservation & Science Directorate
Level 1, 48-52 Wingewarra Street,
Dubbo NSW 2830
OR
 - By email to:
ROG.North@environment.nsw.gov.au
Marked to the attention of the Senior Team Leader Compliance and Regulation.

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8 DEFINITIONS

In this order, the following definitions apply:

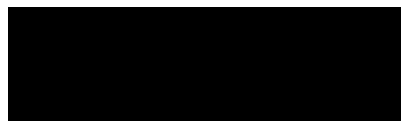
Term	Definition
Annual report	A report completed and submitted to The Department in accordance with the form provided in Attachment C
BC Act	<i>Biodiversity Conservation Act 2016</i>
Clearing	Has the same meaning as defined in the <i>Native Vegetation Act 2003</i>
Exotic plants	Plant species that are not native.
Initial Works Report	A report developed by the Remediator as defined in paragraph 7.1 of this Order
Monitoring report	A report completed and submitted to the Department in accordance with the form provided in Attachment C
Order	This document; a Remediation Order issued under section 11.15 of the BC Act
Pest animals	Includes feral cats, wild dogs, feral pigs, feral goats, feral deer, foxes, hares, rabbits, and other exotic animal species but does not include livestock or native wildlife
Remediation Area	Means the area located on the Property shown schematically on the map in Attachment A and marked "Remediation Areas"
Remediator	████████████████████
Reporting period	Means each annual period commencing from the date of issue for the duration of this Order.
Stock	Means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, domesticated pigs and domesticated goats); it does not include native wildlife
The Department	The NSW Government Department of Planning, Industry and Environment
The property	████████████████████ ████████████████████ ████████████████████
Waste	Has the same meaning as defined in the <i>Protection of the Environment Operations Act 1997</i>
Weed	Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> – list available at: http://weeds.dpi.nsw.gov.au / or any other species that is exotic and is impacting Biodiversity Values

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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. 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 Secretary of the Department of Planning, Industry and Environment 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).
- 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 of Planning, Industry 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 *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.



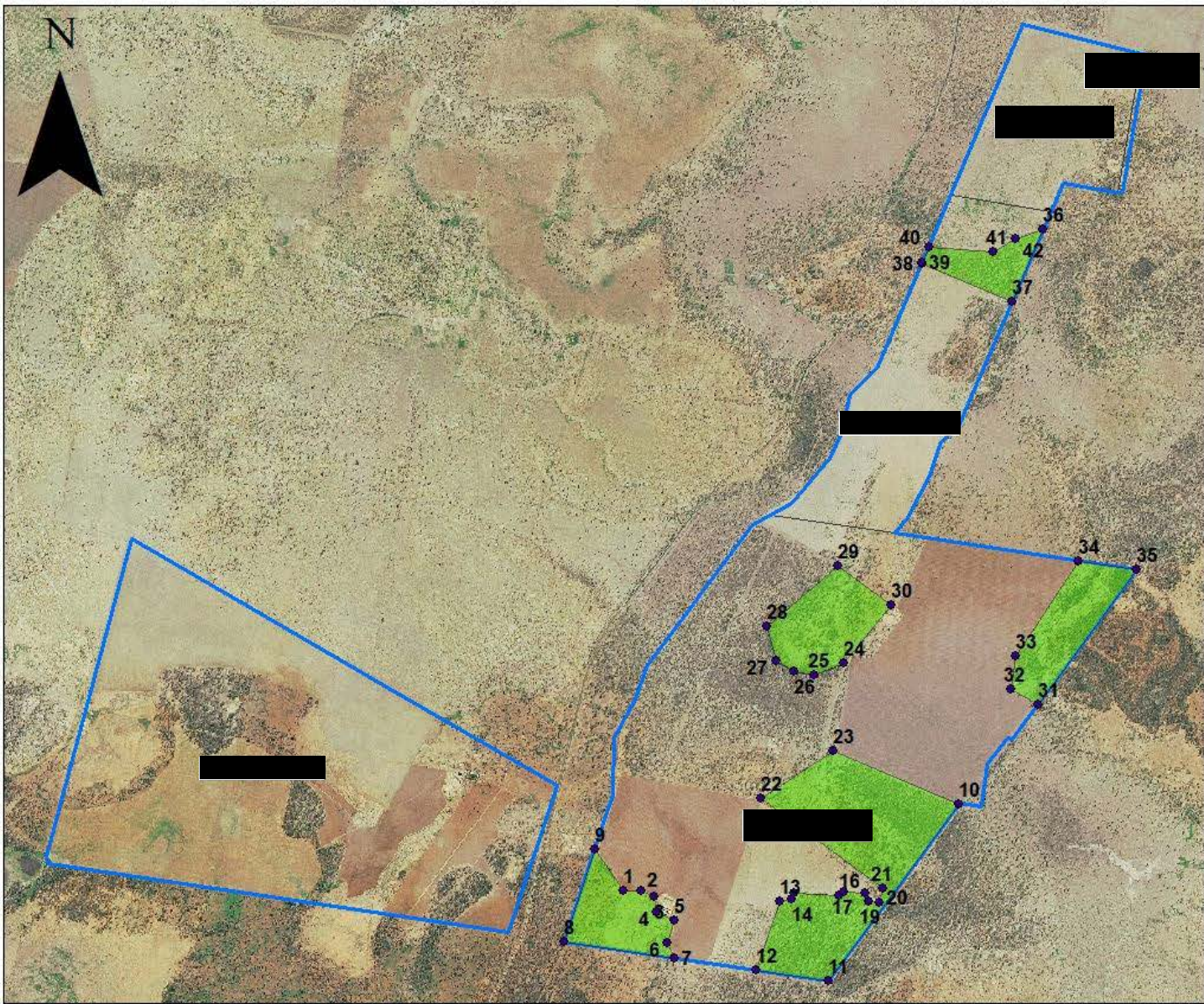
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Director - South West
Biodiversity, Conservation & Science Directorate
(by Delegation)

Attachments:

- A. Map of the Remediation Areas
- B. Revegetation Requirements and Rationale
- C. Monitoring Report



Point Number	Easting	Northing	Latitude	Longitude

- Remediation Order Points
- Remediation Areas (345 ha)
-

Attachment A - Remediation Area Map

Ref No: 201900469
MAP: 1 of 1
Date: 24/11/2020
IMAGE: SPOT 2019

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



Datum/Projection: GCS GDA 1994



**Planning,
Industry &
Environment**

Attachment B – Revegetation Requirements and Rationale

Ground layer regeneration

Endemic Grasses

If exotic species are found to be negatively impacting the ground layer of the Remediation Area after 4 years, the following endemic grass species may be directed to be sown in the Remediation Area to promote soil stability:

- Curly Windmill Grass (*Enteropogon acicularis*)
- Small flower Wallaby Grass (*Rytidosperma setaceum*)
- Warrego summer grass (*Paspalidium jubiflorum*)
- Fairy Grass (*Sporobolus caroli*)
- Umbrella Canegrass (*Leptochloa digitate*) (within 50m of a depression or watercourse)
- Native Millet (*Panicum decompositum*).

These species will be required to be sown at >50% total groundcover per hectare in the Remediation Area.

Mitchell Grasses

Astrebla lappacea is a long-lived (up to 30 years), warm season perennial grass which is palatable to livestock even when it is dry. Crude protein levels range from 4.7–10.8% and phosphorus 0.21–0.43%. Mitchell grass provides one of the most stable and economically important pastures in the semi-arid areas of eastern Australia. There are four species of Mitchell grass in Australia of which curly Mitchell Grass is the most widespread. ‘Yanda’ is a variety of this species bred by NSW Agriculture and selected for high seed yield, superior dry matter and leaf production as well as increased proportion of green leaf growth in winter. Areas that have been cultivated may be sown with Mitchell Grasses (*Astrebla* spp.) at a rate not exceeding 50% of total ground cover in the Remediation Areas; and at an appropriate time to maximise success of germination. Maximum germination percentages (>90%) can be achieved at temperatures between 20–40°C. Ideal sowing times are September/October or January/February avoiding the hottest part of summer when the soil surface dries out quickly. *Astrebla* spp. Have a high-water requirement and therefore it is best to sow when the soil moisture profile is close to full. Conventional seed bed preparation techniques for a cereal crop will apply to paddock preparation for *Astrebla* spp. Good rainfall post sowing will assist in successful field establishment (DPI, 2008).

Naked and fluffy seed can be sown using conventional machinery. Buffel drum seeders have also been successfully used to sow fluffy seed. Seed can be broadcast into a weed free seedbed or into wheat stubble.

Aerial seeding has also had some success. A light harrowing after broadcasting or aerial application will assist in achieving good soil/seed contact. Sowing rates for dryland pastures 1–2 kg/ha. Seed is sown shallow, at no more than 1 cm deep.

A specialised root system found on mature plants allows this species to persist through droughts and under heavy grazing. Whilst this species is long-lived, recruitment of new seedlings occurs only infrequently. *Astrebla* spp. Responds well to moderate grazing or cutting which tends to stimulate tillering (Tiller – aerial shoot usually lateral and basal and more or less erect) and seed production. As this species ages both the number and size of inflorescences are reduced, however, cutting and irrigation may help to promote new growth. *A. lappacea* is susceptible to frost and floods.

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Overstorey regeneration

Coolabah (*Eucalyptus coolabah*) and Black Box (*Eucalyptus largiflorens*) require intermittent flooding to regenerate. The preferred method for regeneration of the mid and upper strata is natural following a flood event. If these species are failing to regenerate after significant rainfall / flooding events; the following species may be directed to be planted at the rates provided in Table 1.

Table 1: Planting rates for tree species

Scientific name	Common Name	Planting rate	Planting location
<i>Eucalyptus coolabah</i> subsp. <i>coolabah</i> or subsp. <i>excerata</i>	Coolabah	5 stems per hectare	All areas
<i>Eucalyptus largiflorens</i>	Black Box	5 stems per hectare	All areas
<i>Eucalyptus camaldulensis</i> subsp. <i>camaldulensis</i>	River Red Gum	10 stems per hectare	Within 50m from the top bank of a mapped watercourse (Attachment B)
<i>Casuarina cristata</i>	Belah	1 stem per hectare	More than 50m from upper edge of depressions or watercourses
<i>Acacia stenophylla</i>	River Cooba	2 stems per hectare	Within 50m of depressions or watercourses
<i>Geijera parviflora</i>	Wilga	2 stems per hectare	All areas
<i>Capparis mitchellii</i>	Wild Orange	2 stems per hectare	All areas
<i>Eremophila maculata</i>	Spotted Fuchsia	1 stem per hectare	All areas

Remediation Order



Attachment C – Monitoring Report

1. Inspection Dates

	Inspection 1	Inspection 2
Date		
Inspected By		
% of Exotic Groundcover		
Number of native trees regenerating per hectare		
Stock present or impacting (Y/N)		
Pest animals present or impacting (Y/N)		
Wildfire Risk (L, M, H)		

2. Remediation work completed

Weed control

Pest animal control

Stock Impact

Remediation Order



Fire hazard reduction

3. Statement of condition of native vegetation

4. Future remediation work required

Signed: _____ **Name:** _____ **Position:** _____

Signature and certification

I / We declare and certify that the information in this monitoring report is true and correct.

Signature:	Signature:
Name:	Name:
Position:	Position:
Date: / /	Date: / /