

# Remediation Order



Planning,  
Industry &  
Environment

## ORDER ISSUED TO:

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

Notice Number: DOC19/619248

Reference Number: 00073-2011

Date: 22 June 2020

**BY:** Registered post

**CC:** Company Secretary, [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Department of Planning, Industry and Environment (**The Department**) has responsibility for the enforcement of the now repealed *Native Vegetation Act 2003 (NV Act)*.
- B. The NV Act was repealed on 25 August 2017.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. 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 The Department 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. I, Gregory Campbell, Senior Team Leader, Compliance and Regulation North West, Biodiversity and Conservation Division hold delegated authority on behalf of the Chief Executive of The Department for the purposes of section 11.15 of the BC Act.

### BASIS FOR ISSUING REMEDIATION ORDER

- F. [REDACTED] and [REDACTED] owned the property known as [REDACTED] [REDACTED] between 06 August 2008 and 04 October 2019. [REDACTED] consists of the following parcels of land (**the Property**):  
[REDACTED]  
[REDACTED]
- G. **Clearing** of about 97 ha of **native vegetation** including threatened ecological communities, and threatened species habitat occurred on the Property on or about 6 January 2011 until 1 March 2011.
- H. At all material times, it was an offence against section 12 of the NV Act for a person to carry out or authorise clearing of native vegetation, except in accordance with a development consent granted in accordance with the NV Act or a property vegetation plan.

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- I. At all material times, it was an offence against section 118A(3) of the *National Parks and Wildlife Act 1974 (NPW Act)* for a person to pick any plant that is, or is part of, a threatened species, an endangered population or an **endangered ecological community**.
- J. A Remedial Direction was issued to [REDACTED] on 18 November 2011 under section 38 of the NV Act; following a consultation period wherein several remediation options were discussed. [REDACTED] focussed their remediation efforts on a different section of the Property from those defined as the 'Remediation Areas' in that Remedial Direction.
- K. An audit of compliance with that Remedial Direction carried out on 1 July 2019 found that equal or better environmental outcomes would be achieved by redefining the 'Remediation Areas' to more closely align with the work carried out to date.
- L. This Remediation Order (**Order**) will replace the Remedial Direction issued to [REDACTED] and will define a new Remediation Area which will provide equal or better environmental outcomes over the life of this Order.
- M. [REDACTED] (**the Landholder**) purchased the Property from [REDACTED] on 04 October 2019 and have assumed responsibility for ensuring the Remediation Outcomes defined in this Order are achieved.

## OPINION

- N. I, [REDACTED], Senior Team Leader, Compliance and Regulation North West, Biodiversity and Conservation Division, 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

- O. I, [REDACTED], Senior Team Leader, Compliance and Regulation North West, Biodiversity and Conservation Division, order [REDACTED] (**the Remediator**) to carry out the following work and achieve the specified outcomes within the time specified from the date of this Order.

### 1 REMEDIATION AREA

- a. In this Order, **Remediation Area** means the area as defined in the attached map marked **Attachment A**.
- b. Excepted from the Remediation Area are existing farm infrastructure and roads.
- c. This Order requires the Remediator to inform the Environment Agency Head of any change in the ownership or occupancy of the land concerned at least 21 days prior to any such change occurring.

### 2 REMEDIATION OUTCOMES

- a. To restore and conserve species and habitats within the Remediation Area.
- b. To restore ecological function and native vegetation within the Remediation Area.

### 3 DURATION

- a. This Order will be in force until **18 November 2026**; unless varied or revoked in accordance with the BC Act.

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## 4 REMEDIATION WORK

### Soil disturbance

- a. Soil disturbance in the Remediation Area is prohibited, except in accordance with written approval from The Department, or for the purpose of **environmental protection works**.

### Remediation

- b. Native vegetation is to be allowed to regenerate in the Remediation Area as the priority method of remediation. To protect regenerating vegetation and fauna habitat the following activities are prohibited within the Remediation Area:

- Clearing of native vegetation.
- Removal of fallen timber.
- Cultivation.
- Construction of infrastructure.
- Aerial spraying of herbicides or pesticides.

### Exotic flora (weed management)

- c. The Remediator must implement measures to ensure **exotic flora** and **priority weed** species do not have a significant impact on the conservation values of the Remediation Area.
- d. Without limiting this clause, the Remediator must ensure that weeds occupy less than 5% of total groundcover of the Remediation Area. Control measures permitted include:
  - Spot application of herbicide.
  - Manual removal.
  - Biological control.
- e. The plant Mimosa bush (*Vachellia farnesiana*) is to be treated as an **Invasive Native Species** under Division 2 of the *Land Management (Native Vegetation) Code 2018* (Moderate impact clearing of invasive native species).
- f. Implementation of these measures must be commenced within 60 days of the issue of this Order.

### Livestock

- g. 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.

### Pest animals

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

### Fire

- j. 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.

### Access

- k. The Remediator must provide reasonable access to staff of The Department for the purposes of administering this Order.

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- I. The Department must provide reasonable notice of an intention to inspect the Remediation Area.

**Hazards, chemicals and waste**

- m. 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.
- n. **Waste** is not to be placed, stored or kept in the Remediation Area.
- o. 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.

**Costs**

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

**5 INSPECTIONS AND RECORDS**

- a. The Remediator, or a **suitably qualified person** on their behalf, is to inspect the Remediation Area after three years and before four years from the date of issue of this Order.
- b. The purpose of the inspection is to determine the percentage of ground cover that is comprised of exotic flora and priority weeds and to take any action necessary to meet the Remediation Outcomes identified in this Order.
- c. In the Remediation Area, there are four monitoring points located at the GPS co-ordinates given in **Table 1** and mapped at **Attachment A**.

**Table 1: Location of monitoring points**

Monitoring Point	Latitude	Longitude
Monitoring Point 1	██████	██████
Monitoring Point 2	██████	██████
Monitoring Point 3	██████	██████
Monitoring Point 4	██████	██████

- d. 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.
  - Details of any work required within the Remediation Area.
  - The proposed date(s) of that work.
- e. All records required to be kept by this Order must be:
  - Made in the form provided in **Attachment B**.
  - Accurate.
  - Legible.
  - Kept for the duration of this Order.

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## 6 DEFINITIONS

In this Order, the following definitions apply:

Term	Definition
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>
Environmental protection works	Means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes re-vegetation or bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like
Exotic flora	Plant species that are not "native vegetation"
Invasive Native Species	A plant species that invades vegetation communities where it has not been known to occur previously OR a species that regenerates densely following natural or artificial disturbance; and, the invasion and/or dense regeneration of the species results in change of structure and/or composition of the vegetation community, and the species is within its natural geographic range or distribution.
Native vegetation	Has the same meaning as defined in the <i>Native Vegetation Act 2003</i>
NV Act	<i>Native Vegetation Act 2003</i>
NPW Act	<i>National Parks and Wildlife Act 1974</i>
Order	This document; a Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i>
PCT	Plant Community Type
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 stock or native wildlife
Priority weed	Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> - list available at: <a href="http://weeds.dpi.nsw.gov.au/">http://weeds.dpi.nsw.gov.au/</a>
Remediation Area	Means the areas located on the property shown schematically on the map in Attachment A and marked "Remediation Area" with the exception of existing infrastructure such as roads, house yards, buildings and sheds
Remediator	Means [REDACTED]
Stock	Means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, domesticated pigs and domesticated goats); it does not include native wildlife
Strategic grazing	Means grazing by stock, and the management of grasslands used for grazing, that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation
The Department	The NSW Government Department of Planning, Industry and Environment
The Landholder	Means [REDACTED]

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Term	Definition
The Property	[REDACTED] - on the following parcels of land: [REDACTED] [REDACTED]
Waste	Has the same meaning as defined in the <i>Protection of the Environment Operations Act 1997</i>

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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 The Department 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.
- The Department 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.

[Redacted signature block]




22 June 2020

Senior Team Leader  
Compliance and Regulation North West  
Biodiversity and Conservation Division

(by Delegation)

**Attachments:**   **A – Map of the ‘Remediation Area’**  
                          **B – Monitoring and Reporting Forms**



-  Property
-  Remediation Areas (111 ha)
-  Monitoring Points

Planet Explorer - Mosaic - April 2020

**Attachment A  
Remediation Areas**

Scale 1 : 30 000  
GDA94 NSW Lambert

Map prepared by [redacted] on 09/06/2020  
Copyright NSW Department of Planning, Industry and Environment.  
This map is not guaranteed to be free from error or omission.  
The Department and its employees disclaim liability for any act done on the information in the map and any consequences of such acts or omissions.

