

Remediation Order



ORDER ISSUED TO:

The Proper Officer

[REDACTED]
[REDACTED]
[REDACTED]

ATT: [REDACTED]

Order Number: 201900041-1

Case Reference Number: 201900041

Issue Date: 26/03/2020

Property: [REDACTED]
[REDACTED]

By: Registered Post and Email

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 responsibilities regarding the administration and enforcement of the *Biodiversity Conservation Act 2016 (NSW)* (**the BC Act**) and its associated Regulations, and responsibilities regarding the enforcement of Part 5A of the *Local Land Services Act 2013 (NSW)* (**the LLS Act**) and the Regulations under that Part.
- B. Pursuant to section 11.15 of the BC Act, if 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 Secretary may order a person to carry out specified remediation work in a specified manner and within a specified time.
- C. The power to issue a Remediation Order under the BC Act may be exercised for the purposes of the BC Act or Part 5A of the LLS Act (Section 11.2 BC Act).
- D. Graeme ENDERS holds the position of Director South West Branch, Biodiversity and Conservation Division within the Department.
- E. Graeme ENDERS holds delegated authority on behalf of the Chief Executive of the Department for the purposes of section 11.15 of the BC Act.
- F. [REDACTED] are the owners of [REDACTED], [REDACTED], which forms part of the landholding [REDACTED], located on [REDACTED] (**the Property**), upon which the clearing of native vegetation in a regulated rural area occurred contrary to Section 60N of the LLS Act.
- G. The current Director of [REDACTED] is [REDACTED].

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- H. [REDACTED] is the owner of [REDACTED], which forms part of the landholding [REDACTED], [REDACTED], and where the Remediation Area is located.

BASIS FOR ISSUING REMEDIATION ORDER

- I. The Property is categorised on the in-force Native Vegetation Regulatory Map, prepared pursuant to the LLS Act, as Category 2 – Regulated Land.
- J. The Department has investigated the unauthorised clearing of native vegetation in a regulated rural area on the Property between 31/08/2017 and 02/07/2019.
- K. Under Section 60N of the LLS Act, it is an offence to clear native vegetation in a regulated rural area.
- L. The Department's investigation has established that the clearing of 14.6ha of remnant native vegetation occurred on the Property to between 31/08/2017 and 02/07/2019 contrary to section 60N of the LLS Act, and that none of the available defences listed in the LLS Act and associated Regulations in relation to the offences apply.
- M. On the 09/12/2019 [REDACTED] was issued a penalty notice for clearing native vegetation in a regulated rural area contrary to Section 60N of the LLS Act.
- N. The works required by this Order provide for the control, abatement and mitigation of damage sustained to the Property by clearing remnant native vegetation in a regulated rural area contrary to Section 60N of the LLS Act. Section 11.16(2) of the BC Act requires you to carry out remediation work required by this order.
- O. 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.
- P. 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 at <http://www.lec.justice.nsw.gov.au>.

OPINION

- Q. I, Graeme ENDERS, Director South West Branch, Biodiversity and Conservation Division, am satisfied that native vegetation has been unlawfully cleared as a result of the commission of an offence against Section 60N of the LLS Act.

ORDER TO CARRY OUT REMEDIATION WORK

- R. In order to mitigate the damage to the area concerned:

I, Graeme ENDERS, Director South West Branch, Biodiversity and Conservation Division, 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 fifteen (15) years** from the date of this Order (**the Term**):

Remediation Order



1 REMEDIATION AREA

- 1.1 In this Order, Remediation Area means the area identified as the Remediation Area on the attached map at Attachment-1 titled Remediation Area Map-1 and Attachment-2 titled Remediation Area Map-2 which includes GPS coordinates for the location of Remediation Area.
- 1.2 The Remediation Area is an alternate site to the area unlawfully cleared, however is located within the collective landholding [REDACTED], owned and controlled by the Remediator. The Remediation Area is located within [REDACTED] and is 58ha of remnant native vegetation.

2 EXCLUSION OF REMEDIATION AREA

Fencing and Stock Management

- 2.1 By the **30 April 2020** the Remediator must construct a fence around the perimeter of the Remediation Area for the purposes of excluding stock (**the fence**). If areas adjoining the Remediation Area are not stocked, the Remediator is not required to construct the fence around the perimeter of the Remediation Area, however is required by **30 April 2020** to install clearly identifiable coloured marker posts along the perimeter of the Remediation Area at the locations identified in Attachment-2 for the purposes of clearly identifying the Remediation Area from other area of the Property.
- 2.2 The Remediator must inspect the fence or coloured marker posts around the perimeter of the Remediation Area to ensure the fence or coloured marker posts are in good condition and compliant with the requirements of condition 2.1 at least once every twelve (12) month Reporting Period. If at any time the Remediator becomes aware that the fence or the coloured markers posts do not meet the requirements referred to in condition 2.1, the Remediator must repair the fence or replace the coloured marker posts as soon as practicable and in any event within fourteen (14) days of becoming so aware, to ensure the fence or the coloured marker posts meet the requirements referred to in condition 2.1.
- 2.3 If the fence is required to be constructed, the fence and any associated gates in the fence line must be constructed in such a manner as to exclude stock from the Remediation Area.
- 2.4 Stock must be removed from the Remediation Area by the Remediator by the **30 April 2020**. Any stock found within the Remediation Area after the **30 April 2020** must be removed by the Remediator as soon as practicable and in any event within fourteen (14) days of becoming so aware.
- 2.5 If at any time stock is found within the Remediation Area the Remediator must inspect the fence as soon as practicable and in any event within fourteen (14) days of becoming so aware, to determine if it continues to meet the requirements referred to in condition 2.1.
- 2.6 Any within the Remediation Area must be approved in writing by the Department prior to the clearing being carried out.

3 WEED, EXOTIC SPECIES, COMMERCIAL CROP AND NON-NATIVE PLANT MANAGEMENT

- 3.1 Any exotic species, commercial crops or non-native plant species found within the Remediation Area after **30 April 2020** must be removed by the Remediator as soon as practicable and in any event within fourteen (14) days of becoming so aware.

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- 3.2 If any exotic species, commercial crops or non-native plant species are identified in the Remediation Area the Remediator must destroy all such exotic species, commercial crops or non-native plant species by either spot application of herbicide or by removal by non-mechanised means.
- 3.3 The Remediator must inspect the Remediation Area for to exotic species, commercial crops or non-native plant species at least once every twelve (12) month Reporting Period.

4 NOTIFIABLE INCIDENTS, EVENTS, OR ACTIVITIES

- 4.1 The Remediator is required to notify the Department by contacting the Team Leader Compliance & Regulation, South West Branch (by phone or email) of any incident, event, or activity that has or may adversely impact or affect the health of native vegetation and/or native animal species within the Remediation Area. This may include:
 - a) fire;
 - b) flood;
 - c) storm; or
 - d) any other incident, event, or activity that has or may adversely impact or affect the health of native vegetation and/or native animal species within the Remediation Area.
- 4.2 Notification is to be made by the Remediator as soon as practicable and in any event within fourteen (14) days of becoming so aware of any incident, event, or activity that has or may adversely impact or affect the health of native vegetation and/or native animal species within the Remediation Area.

5 RECORDS

- 5.1 The following records must be kept by the Remediator in respect of any inspections conducted by the Remediator or nominated representative:
 - a) the date(s) on which the inspection was undertaken;
 - b) the name of the person who undertook the inspection; and
 - c) the type of inspection undertaken.
- 5.2 The following records must be kept by the Remediator in respect of any work undertaken as a result of any inspection(s):
 - a) details of any required work within the Remediation Area;
 - b) the date(s) this work was undertaken;
 - c) the date on which this work was completed; and
 - d) the name of the person who performed the work undertaken.
- 5.3 All records required to be kept by this Order must be:
 - a) true, accurate and correct;
 - b) in a legible form, or in a form that can readily be reduced to a legible form;
 - c) kept for at least four (4) years after the inspection or event to which they relate took place; and
 - d) produced in a legible form to any Authorised Officer of the Department who asks to see them.

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6 REPORTING

6.1 The Remediator must prepare and submit an Initial Works Report by the **14 May 2020**:

a) By Registered Post to:

Team Leader Compliance and Regulation
South West Branch
NSW Department of Planning, Industry and Environment
PO Box 5336
Wagga Wagga NSW 2650

or

b) By courier or by hand to:

Team Leader Compliance and Regulation
South West Branch
NSW Department of Planning, Industry and Environment
7161 Olympic Highway
Wagga Wagga NSW 2650

or

c) By email to:

compliance.southwest@environment.nsw.gov.au

6.2 The Initial Works Report must be prepared utilising the Initial Works Report template at Attachment-3 of this Order.

6.3 The Remediator must prepare and submit a Monitoring Report by the **14 May 2021** and the **14 May each year thereafter**:

a) By Registered Post to:

Team Leader Compliance and Regulation
South West Branch
NSW Department of Planning, Industry and Environment
PO Box 5336
Wagga Wagga NSW 2650

or

b) By courier or by hand to:

Team Leader Compliance and Regulation
South West Branch
NSW Department of Planning, Industry and Environment
7161 Olympic Highway
Wagga Wagga NSW 2650

or

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c) By email to:

compliance.southwest@environment.nsw.gov.au

6.4 The Monitoring Report must be prepared utilising the Monitoring Report template at Attachment-4 of this Order.

7 DEFINITIONS

In this order, the following definitions apply:

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 Planning, Industry and Environment.
Exotic 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	This document: A Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i> .
the Property	Means the landholding [REDACTED], located on [REDACTED].
Remediation Area	Means the areas shown on the map in Attachment-1 and Attachment-2 of this Order and located within [REDACTED] which forms part of the landholding [REDACTED].
Remediator	Means [REDACTED].
Reporting Period	Means each annual twelve (12) month reporting period for the duration 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.

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Term	Means the duration of this Order which is 15 years from the date the Order is issued.
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 Chief Executive 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.
- 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.

E_Signature: Graeme Enders 26th March 2020

Graeme ENDERS

Director South West Branch

Biodiversity and Conservation Division

NSW Department of Planning, Industry and Environment

(by Delegation)

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Attachment:

1. Map-1 (Location of Remediation Area relative to land parcel)
2. Map-2 (Remediation Area with GPS reference coordinates)
3. Initial Works Report Template
4. Monitoring Report Template



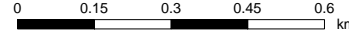
Legend

-  Remediation Area (58ha)
-  [Redacted]
-  [Redacted]

Remediation Order 201900041-1 Attachment-1


[Redacted]

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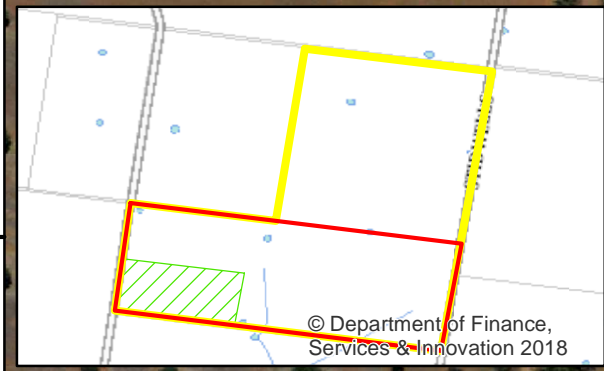
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Map Ref: RO Map Attachment-1
Author: [Redacted]
Date: 09/03/2020
Imagery: 20/11/2007


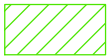




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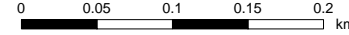


Legend

-  Marker Post
-  Remediation Area (58ha)
-  [Redacted]
-  [Redacted]


Remediation Order 201900041-1 Attachment-2

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Datum/Projection: GCS GDA 1994

Map Ref: RO Map Attachment-2
Author: [Redacted]
Date: 09/03/2020
Imagery: 20/11/2007



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