



**ORDER ISSUED TO:**

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

Order Number: 201900223-3  
CCMS Case Ref. No.: 201900223  
Issue Date: 20 August 2021  
Properties: [REDACTED]

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

**ISSUED VIA: Email**

**Who we are:** The Department of Planning, Industry and Environment (**the Department**) is responsible for the administration and enforcement of the *Biodiversity Conservation Act 2016 (NSW) (BC Act)*, the now repealed *Native Vegetation Act 2003 (NV Act)*, and the Regulations associated with both Acts. Although the NV Act was repealed on 25 August 2017, any offence committed against the NV Act prior to that date remains subject to regulatory actions by the Department. Clause 58 of *Biodiversity Conservation (Savings and Transitional) Regulation 2017 (BC (S&T) Regulation)* enables the provisions of the NV Act relating to proceedings for an offence, penalty notices, court orders and remediation orders to continue to apply.

**Why we serve remediation orders:** Pursuant to section 11.15 of the BC Act, if the Environment Agency Head is satisfied that damage has occurred in or as a result of the commission of an offence against the NV Act, the Environment Agency Head may order a person to carry out specified remediation work in a specified manner and within a specified time.

Remediation orders under Division 4 of Part 11 of the 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.

**What you are required to do:** Section 11.16(2) of the BC Act sets out works required by a remediation order. These works provide for the control, abatement and mitigation of the damage and/or maintenance, remediation, restoration of the damaged area of the Property. For the specific works you are required to carry out by this remediation order, refer to section 3, "REQUIREMENTS – WHAT YOU MUST DO TO COMPLY".

**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 our remediation work under this Order. The maximum penalty that a court may impose if you contravene the Order 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. CIRCUMSTANCES IN WHICH THE REMEDIATION ORDER IS BEING ISSUED

██████████ is one of the current owners of ██████████ and ██████████ (the Properties). The Properties are defined according to the land parcels listed in **Table 1**.

**Table 1: Land parcels comprising the properties**

██████████	██████████
██████████	██████████
██████████	██████████
██████████	██████████
██████████	██████████
██████████	██████████
██████████	██████████ (leased) <sup>1</sup>

The Department has investigated a report of the clearing of native vegetation on **the Properties** between November 2015 and August 2017. During that period, it was an offence to clear native vegetation contrary to section 12 of the NV Act.

Information and evidence obtained to date, including an assessment of aerial and satellite imagery, a site inspection, and information obtained from the landholders indicates that damage, caused by clearing of native vegetation including an endangered ecological community, occurred on the Properties between November 2015 and August 2017. Information and evidence obtained to date also indicates that the damage occurred in or as a result of clearing of native vegetation contrary to section 12 of the NV Act and the available defences listed in the NV Act and associated Regulation have been investigated and do not appear to apply.

The Information and evidence obtained supports that a total of 176.8 ha of clearing occurred in the Areas of Interest marked on the maps at **Attachment A** (The Areas of Interest).

The cleared trees and other native vegetation comprised a plant community type described as Coolibah – River Coolibah – Lignum Woodland of frequently flooded floodplains mainly in the Darling Riverine Plains Bioregion” (**PCT 39**). PCT 39 is a component of a listed endangered ecological community under the BC Act and the repealed Threatened Species Conservation Act 1995 named as “Coolibah – Blackbox Woodland in the Darling Riverine Plains, Brigalow Belt South, Cobar Peneplain and Mulga Lands Bioregion”.

The areas subject to this Order are not the same as the Areas of Interest identified in **Attachment A**. The area subject to remediation in this Order is 176.8 hectares and is depicted on the map at **Attachment B** (the Remediation Area).

## 2. REASON FOR ISSUING THE REMEDIATION ORDER

The Senior Team Leader Compliance and Regulation holds delegated authority on behalf of the Environment Agency Head for the purposes of section 11.15 of the BC Act.

I, ██████████, Senior Team Leader Compliance and Regulation, am satisfied that 176 ha of native vegetation has been cleared from the Properties between November 2015 and August 2017 in or as a result of the commission of an offence against Section 12 of the NV Act.

<sup>1</sup> Mr ██████████ holds a Crown Licence (██████████) over Lot ██████████

In order to maintain, remediate or restore the damaged area, habitat, plant, animal or vegetation concerned, I, [REDACTED], Senior Team Leader Compliance and Regulation, order [REDACTED] (**Remediator**) to carry out the following remediation work on the Property within the time specified from the date of this Order:

### 3. REQUIREMENTS – WHAT YOU MUST DO TO COMPLY

#### 3.1 Remediation Area

- 3.1.1 In this Order, Remediation Areas means the areas marked as Remediation Areas in the maps at Attachment B.
- 3.1.2 You must notify the Environment Agency Head within 14 days of listing any of the properties on which the Remediation Areas occur for sale if you intend on selling the land subject to this Order.
- 3.1.3 You must notify the Environment Agency Head within 14 days of the termination of the Crown Lease ([REDACTED]) over Lot [REDACTED].

#### 3.2 Duration

- 3.2.1 This remediation order will be in force for 20 years, unless amended or revoked
- 3.2.2 A review of the progress of the remediation will be undertaken after 15 years to determine whether sufficient remediation has occurred to compensate for the environmental harm caused by the unlawful clearing in the Areas of Interest.
- 3.2.3 If, in the opinion of the Department, sufficient remediation has occurred after 15 years, the remediation order will be revoked.

#### 3.3 Cultivation

- 3.3.1 The Remediation Areas are to be excluded from cultivation practices; except as required by this Order.
- 3.3.2 If a crop has already been sown into the Remediation Areas at the time of this Order, the sown area must be ploughed in.

#### 3.4 Soil Disturbance

- 3.4.1 Soil disturbance in the Remediation Areas is prohibited, except as a requirement of this Order. Consent may be sought from the Department to carry out remediation work involving soil disturbance

#### 3.5 Native vegetation remediation

- 3.5.1 Native vegetation is to be allowed to regenerate in the Remediation Areas as a priority method of remediation. Unless otherwise specified under this Order.
- 3.5.2 If after a period of two years, native grass cover in the Remediation Areas is less than 20%, the Remediator will sow the Remediation Areas with native grasses as prescribed in **Attachment C**.
- 3.5.3 If after a period of 4 years, over-storey species regeneration is occurring at a rate lower than 10 stems per hectare, then, plant over-storey species in accordance with the directions given in **Attachment C**.

- 3.5.4 The Remediator must ensure that planted native vegetation within the Remediation Areas is maintained in accordance with the plant density requirements for the duration of this Order.
- 3.5.5 All planted trees must be inspected and monitored quarterly and all dead plantings must be replaced by the time of the annual report submission to ensure required growth is sustained by the time of the 5-year inspection.
- 3.5.6 To protect rehabilitating vegetation communities and developing fauna habitat elements, the following activities are not permitted within the Remediation Areas
- Soil disturbance except as a requirement of this Order.
  - Disturbance of vegetation except as a requirement of this Order

### 3.6 Exotic Flora

- 3.6.1 If any non-native plant species or weeds defined as 'Priority Weeds' are identified within the Remediation Areas; these exotic species must be managed to occupy less than 5% of total ground cover, as soon as practicable. Control measures permitted include
- Spot application of herbicide.
  - Manual removal.
  - Biological control

### 3.7 Pest Animals

- 3.7.1 The remediator must take all reasonable steps to control pest animals within the Remediation Area, by any approved means

### 3.8 Stock

- 3.8.1 The Remediator must implement measures to keep the Remediation Areas free of **stock**, except in accordance with a **sustainable grazing** regime approved by the Department

### 3.9 Fire

- 3.9.1 The Remediator must take all reasonable steps to prevent wild fire occurring within the Remediation Areas

### 3.10 Hazardous chemicals and waste

- 3.10.1 The use of chemicals, fertilisers, insecticides, herbicides and soil ameliorants (e.g. gypsum, lime) is not permitted on the Remediation Areas except and required by this Order.
- 3.10.2 Waste is not to be placed, stored or kept in the Remediation Areas.

### 3.11 Inspections

- 3.11.1 The Remediator is to inspect the Remediation Areas two times each year, with a minimum of 150 days between each inspection for the purposes of determining the percentage of ground cover that is comprised of **exotic flora** and priority weeds
- 3.11.2 In the Remediation Areas, there are four monitoring points located at the GPS co-ordinates (GDA 94 MGA Zone 55) given in **Table 2** and mapped at **Attachment B**. The co-ordinates given must be permanently marked to ensure the location is the same each monitoring period.

**Table 2: Location of monitoring points**

<b>Monitoring Point</b>	<b>Easting</b>	<b>Northing</b>
Monitoring Point 1	██████	██████
Monitoring Point 2	██████	██████
Monitoring Point 3	██████	██████
Monitoring Point 4	██████	██████

3.11.3 The following records must be kept by the Remediator for all inspections:

- a) The date(s) on which the inspection was undertaken
- b) The name of the person who undertook the inspection
- c) Observations made during the inspection
- d) Details of any required work within the Remediation Area
- e) The date(s) of that work

3.11.4 All records required to be kept by this order must be:

- a) Made in the forms provided (**Attachment D**)
- b) Accurate
- c) In a legible form
- d) Kept for the duration of the Remediation Order
- e) Provided to the Department with the Annual Report prepared and submitted in accordance with 3.12.2 of this Order.
- f) Produced in a legible form to any authorised officer of the Department who asks to see them.

### **3.12 Reporting Requirements**

3.12.1 By **20 November 2021** you must submit a completed **Initial Works Report**. This report must contain:

- a) Confirmation of the exclusion of stock (unless grazing is in accordance with an approved **sustainable grazing** regime) and dates of any actions taken to remove stock
- b) The percentage of ground cover that is comprised of exotic plants and priority weeds
- c) An assessment of pest animal presence within the Remediation Areas.
- d) Advice of any completed, required, or proposed work within the Remediation Areas.

3.12.2 By 31 August 2022 you must submit a completed Annual Monitoring Report (**Attachment E**). You must submit a completed report by 31 August every year for the duration of the Order.

3.12.3 Reports may be submitted to the Department using any of the following methods:

- a) By registered post to:  
Senior Team Leader, Compliance and Regulation  
Biodiversity and Conservation  
PO Box 2111  
Dubbo NSW 2830
- b) By courier or by hand to:  
Senior Team Leader, Compliance and Regulation

Biodiversity and Conservation  
Level 1, 52 Wingewarra Street,  
Dubbo NSW 2830

c) By email to:

[ROG.North@environment.nsw.gov.au](mailto:ROG.North@environment.nsw.gov.au)

Marked to the attention of Compliance and Regulation

## DEFINITIONS

In this Order, the following definitions apply:

Term	Definition
BC Act	Means the <i>Biodiversity Conservation Act 2016</i>
Cleared Areas	Areas where native vegetation was cleared in contravention of section 12 of the <i>Native Vegetation Act 2003</i>
Clearing	Has the same meaning as defined in the <i>Native Vegetation Act 2003</i>
Damage	Damage has the same meaning as defined in section 11.14 of the <i>Biodiversity Conservation Act 2016</i>
Density	Means counting the number of live stems within 20 metre by 20 metre square sampling areas in the Remediation Area. <Insert number> sampling areas must be evenly distributed within the Remediation Area. Live stems include individual native trees or shrubs of all ages, from small juvenile plants to large mature adults. Where a single plant has multiple stems, only the largest stem is counted.
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
Exotic Species	Plant species that are not "native vegetation"
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>
NV Act	<i>Native Vegetation Act 2003</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	Hares, rabbits, feral pigs, feral goats, and camels but does not include stock or native wildlife
Priority Weed	Means a plant that is a pest as defined by section 15 of the Biosecurity Act 2015 - 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 Properties shown schematically on the map in Attachment B outlined in green and marked "Remediation Areas"
Remediators	Means [REDACTED]
Reporting period	Reporting period means each annual period from the commencement of this Order
Term	Means the duration of this Order
The Properties	As defined in Table 1 of this Order



## **WARNING AND INFORMATION ABOUT THIS ORDER**

- Under section 11.18 of the BC Act if you fail to comply with this Order the Environmental Agency Head or Delegate may authorise any person to enter the Property and carry out all of part of the work and may then recover the cost from you.
- Under section 13.14 of the BC Act 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.
- 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.
- 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 the NV 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 the NV Act. A Remediation Order is separate to any potential enforcement action.



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Senior Team Leader, Compliance and Regulation  
Greater Sydney Branch  
(by Delegation)

### **Attachments:**

- A. Maps of the Areas of Interest
- B. Maps of the Remediation Area
- C. Revegetation Requirements and Rationale
- D. Monitoring Point Inspection Form
- E. Annual Reporting Form






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# Attachment A.1: Map of the Areas of Interest (South) Biodiversity Conservation Act 2016 s.11.15 Remediation Order

Remediator: [REDACTED]  
Remediation Order: 20200223-3  
[REDACTED]



## Legend

-  Areas of Interest (17.9/176.8 ha)\*
-  [REDACTED]
-  [REDACTED]

\* Outlines of paddock tree area polygons have been thickened to enable visibility at this scale

Base imagery SPOT 2019.

Base cadastral and topographic data supplied by NSW Land and Property Management Authority.

Responsibility lies with the property owner to confirm the accuracy of information supplied by the NSW Land and Property Management Authority.



Datum/Projection: GDA 94 MGA Zone 55



Legend

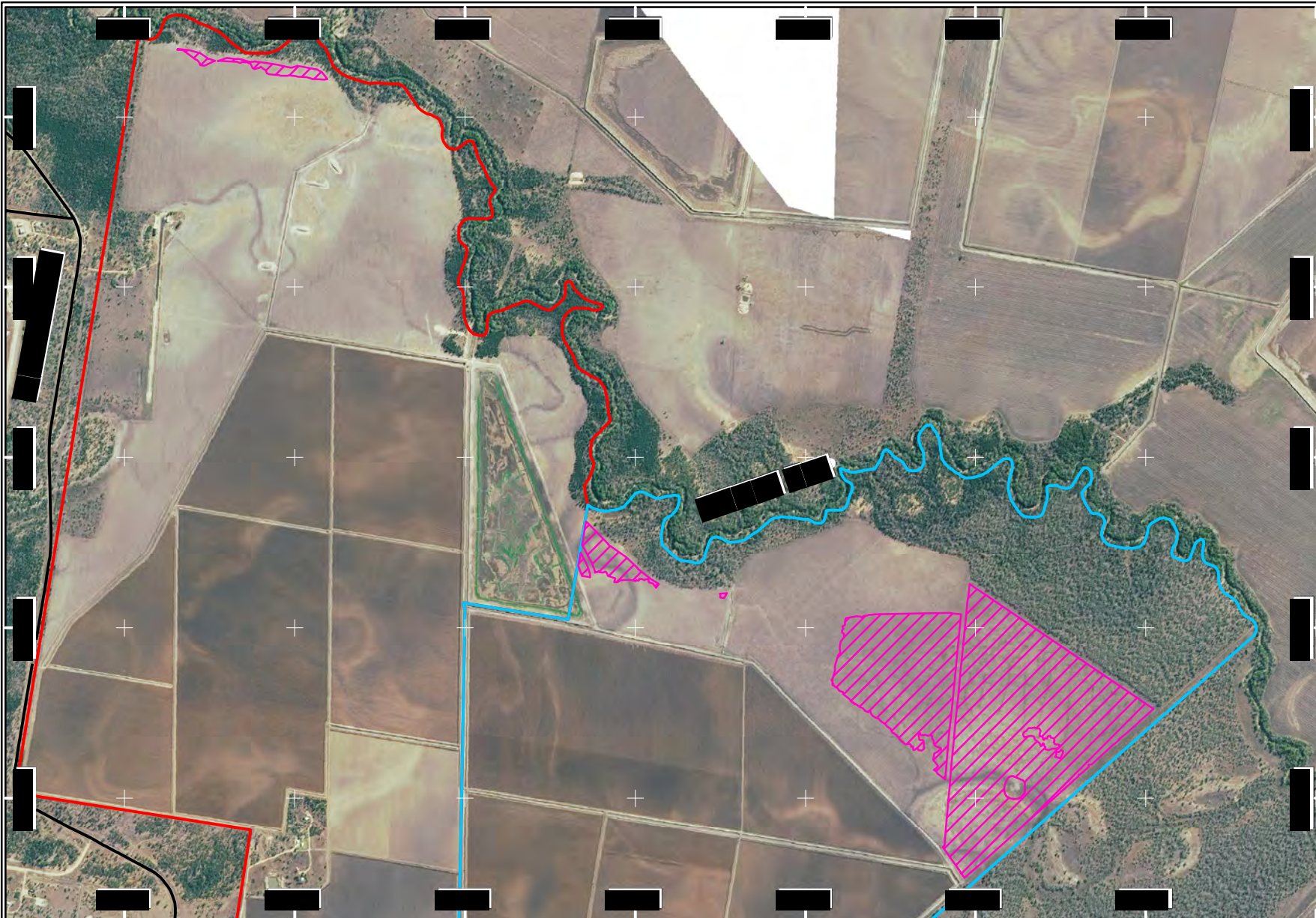
- Areas of Interest (158.9/176.8 ha)
- [Blue outline]
- [Red outline]



Base imagery SPOT 2019.

Base cadastral and topographic data supplied by NSW Land and Property Management Authority.

Responsibility lies with the property owner to confirm the accuracy of information supplied by the NSW Land and Property Management Authority



Attachment A.2: Map of the Areas of Interest (North)  
Biodiversity Conservation Act 2016 s.11.15 Remediation Order

Remediator: [Redacted]  
Remediation Order: 20200223-3  
[Redacted]



Datum/Projection: GDA 94 MGA Zone 55

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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.



# Attachment B: Map of the Remediation Areas Biodiversity Conservation Act 2016 s.11.15 Remediation Order

Remediator: [REDACTED]  
Remediation Order: 20200223-3  
[REDACTED]



### Legend

(1) Monitoring Points



Remediation Areas

Base imagery SPOT 2019.

Base cadastral and topographic data supplied by NSW Land and Property Management Authority.

Responsibility lies with the property owner to confirm the accuracy of information supplied by the NSW Land and Property Management Authority.



Datum/Projection: GDA 94 MGA Zone 55



# Remediation Order



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## ATTACHMENT C – Revegetation Requirements and Rationale

### 1 Cultivated areas

#### Endemic Grasses

To reduce the likelihood of weed invasion and to promote soil stability the following endemic grass species should be sown in the Remediation Areas that have been previously cultivated:

- Curly Windmill Grass (*Enteropogon acicularis*)
- Small flower Wallaby Grass (*Rytidosperma setaceum*)
- Warrego summer grass (*Paspalidium jubiflorum*)
- Native Millet (*Panicum decompositum*).
- Mitchell Grass (*Astrebla lappacea*)
- Queensland Bluegrass (*Dichanthium sericeum*)

These species should be sown at >60% total groundcover per hectare in the Remediation Areas.

#### 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.

### 2 Overstory 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 fail to regenerate after a significant rainfall / flooding event, or in accordance with condition 3(f) of this Order; plant the following species at the rates provided in **Table 2**.

# Remediation Order

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**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>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