



ORDER ISSUED TO:

[REDACTED]
[REDACTED]
[REDACTED]

Order Number: DOC22/1071339
CCMS Case Ref. No.: 202203572
Issue Date: 16 December 2022
Property: [REDACTED]
[REDACTED]

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

BY REGISTERED POST AND EMAIL: [REDACTED]

Date of issue: 16 December 2022

Who are we: The Department of Planning and Environment 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.

Why we serve remediation orders: Pursuant to section 11.15 of the BC Act, if the Environment Agency Head (the Secretary of the Department of Planning and Environment) 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 Environment Agency Head may order a person to carry out specified remediation work in a specified manner and within a specified time.

What you are required to do: The works required by this remediation order provide for the control, abatement and mitigation of the damage and/or maintenance, remediation, restoration of the damaged area of the Property. Section 11.16(2) of the BC Act requires you to carry out remediation work required by this Order.

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 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.

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>.



Remediation Order

1. DEPARTMENT OF PLANNING AND ENVIRONMENT OBSERVATIONS

The Department is investigating a report of unauthorised clearing of native vegetation on the Property between November 2020 and August 2021.

Under LLS Act it is an offence pursuant to clear native vegetation in a regulated rural area contrary to section 60N of the LLS Act. Additionally, it is also an offence pursuant to pick plants or damage habitat of threatened species or ecological community contrary to section 2.2 and 2.4 of the BC Act.

Information and evidence obtained to date, including a site inspection indicates that damage occurred on the property to native vegetation and threatened species habitat between November 2020 and August 2021. The damage caused to native vegetation and threatened species habitat comprised of clearing approximately 8 hectares of remnant woody vegetation. 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 60N of the LLS Act and sections 2.2 and 2.4 of the BC Act. None of the available defences listed in the BC Act and/or Part 5A LLS Act and associated regulations in relation to the before mentioned offences apply.

The Remediation Area is designated on the in force Native Vegetation Regulatory Map, prepared pursuant to Division 2 of the LLS Act, as Category 2 – Sensitive Regulated Land / Category 2 – Vulnerable Regulated Land.

2. REASONS FOR VIEW FORMED

I, [REDACTED], Senior Team Leader Compliance and Regulation, am satisfied that the following has been damaged:

- a) habitat of a threatened species or threatened ecological community on the Property, namely, *Solanum Celatum* habitat.
- b) native vegetation on category 2-regulated land under Part 5A of the LLS Act.

in or as a result of the commission of an offence against section 60N of Part 5A of the LLS Act and section 2.2 and 2.4 of the BC Act.

In order to:

- a) control, abate or mitigate the damage to the area, habitat, plant, animal or vegetation concerned;
- b) maintain, remediate or restore the damaged area, habitat, plant, animal or vegetation concerned

I, [REDACTED], Senior Team Leader Compliance and Regulation 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 25 years from the date of this Order.

[REDACTED] holds delegated authority on behalf of the Environment Agency Head for the purposes of section 11.15 of the BC Act.

3. REQUIREMENTS – WHAT YOU MUST DO TO COMPLY

In this Order, Remediation Area means the area identified in attachment 1 as 'Remediation Area'

This Order must be complied with from the date of the Order for the Term.



Remediation Order

3.1 General Requirements

- 3.1.1 In this Order, Remediation Area means the red hatched areas labelled 'Remediation Area' on the attached map which is labelled 'Attachment 1 - Remediation Area Map'.
- 3.1.2 To mitigate the clearing that has occurred, the Remediator must retain vegetation within the areas labelled 'Remediation Area' on the map labelled 'Attachment 1 - Remediation Area Map'.
- 3.1.3 If at any time any weeds, exotic species, commercial crops or non-native plant species are found within the Remediation Area, the Remediator must destroy all such weeds, exotic species, commercial crops or non-native plant species by either spot application of herbicide or by removal by non-mechanised means as soon as practicable, or as directed by DPIE.
- 3.1.4 If at any time any pest herbivores are found within the Remediation Area, the Remediator must make attempts to control the pest herbivores by non-mechanised means.
- 3.1.5 The Remediator must ensure fallen timber and debris present in the Remediation Area are retained for the purposes of habitat.
- 3.1.6 The Remediator must not pick, cut, poison, remove or harm native vegetation in the Remediation Areas. Unless undertaken in accordance with allowable activities for category 2 sensitive land.
- 3.1.7 The Remediator must only undertake land management activities in accordance with allowable activities for category sensitive land in Rural zones of the property.
- 3.1.8 The Remediator must only undertake vegetation management in accordance with Shoalhaven City Council Development Control Plan and Local Environmental Plan in Conservation zones of the property.

DEFINITIONS

In this Order, the following definitions apply:

Term	Definition
BC Act	Means 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 and Environment.
Equally	Means to the same extent. Example: if 200 stems of 4 species are required, each species should have 50 stems
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>
Order	This document: a Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i>
Remediation Area	Means the areas located on the Property shown schematically on the map in Attachment 1 outlined in red and marked "Remediation Area" being parts of [REDACTED]
Remediators	[REDACTED]

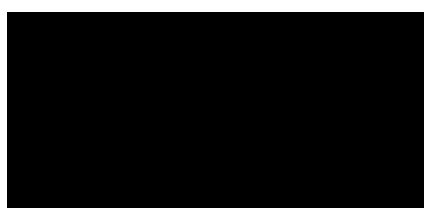


Remediation Order

Reporting period	Reporting period Means each annual period from the commencement of this Order
Term	25 Years
The Property	[REDACTED]
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

- If you fail to comply with this Order the Environment Agency Head or his/her Delegate may authorise any other person to enter the Property and carry out all of part of the work and may then recover the cost from you (section 11.18 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 (section 13.14 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 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 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 LLS 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 LLS Act. A Remediation Order is separate to any potential enforcement action.



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[REDACTED]
 Senior Team Leader Compliance and Regulation Department
 Planning and Environment
 (by Delegation)



Attachment:

1. Map of the Remediation Area



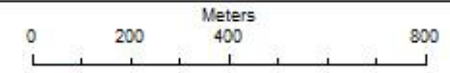
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Legend

-  Property Boundary
-  Remediation Area



Attachment 1 - Remediation Area Map'



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