



Our reference: DOC22/316894

[Redacted]

Email: [Redacted]

Subject: Remediation Order DOC22/316894

22 April 2022

Dear [Redacted],

The Department of Planning and Environment is responsible for administering and enforcing the *Biodiversity Conservation Act 2016* (BC Act). Attached is a Remediation Order (RO) issued under section 11.15 of the BC Act.

If you require any further information, please contact [Redacted], Compliance & Regulation Officer, Hunter Central Coast Biodiversity and Conservation Division at email:

hunter.compliance@environment.nsw.gov.au

Yours sincerely

[Redacted signature]

[Redacted name]

Senior Team Leader Compliance & Regulation
Hunter Central Coast Branch
Biodiversity and Conservation Division



Remediation Order

ORDER ISSUED TO:

[REDACTED]
[REDACTED]
[REDACTED]

BY Email – [REDACTED]

Order Number: DOC22/316894

CCMS Case Ref. No.: 202001719

Issue Date: **22 April 2022**

Property: [REDACTED]
2250

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

Who are we: The Department of Planning and Environment has responsibility for the administration and enforcement of the *Biodiversity Conservation Act 2016* (NSW) (**the BC Act**), the now repealed *Native Vegetation Act 2003* (**NV Act**), and the Regulations associated with both Acts. Although the NV Act was repealed on 25 August 2017, any offence committed against the NV Act prior to that date remains subject to regulatory actions by the Department.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 54 of *Biodiversity Conservation (Savings and Transitional) Regulation 2017* (**BC (S&T) Regulation**) states that a remediation order 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 *National Parks and Wildlife Act 1974* (NPW Act) or the NV Act that occurred before 25 August 2017.

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 1. The maximum penalty that a court may impose for a Tier 1 offence is \$1,650,000 (plus a further \$165,000 for each



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animal or whole plant to which the offence relates) for a corporation, and \$330,000 (plus a further \$33,000 for each animal or whole plant to which the offence relates) 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. DEPARTMENT OF PLANNING AND ENVIRONMENT OBSERVATIONS

The Department has investigated a report of harm to plants that are threatened species at [REDACTED], registered on title to [REDACTED] (the property).

Under Section 2.2 (1)(a) of the *Biodiversity Conservation Act 2016* (BC Act), a person who cuts, removes, destroys, or injures a plant that is of a threatened species is guilty of an offence.

Information and evidence obtained to date, including site inspections on 2 Sept 2020 and 30 November 2020 and an interview on 23 February 2021 confirm that [REDACTED] personally undertook clearing of native vegetation and conducted ground disturbing activities on the property using heavy machinery. Approximately 1.5 Ha of native vegetation has been impacted between October and December 2019 including 0.29 Ha subject to continual impact from 2010. The department alleges native vegetation was cleared, stockpiles of fallen trees and shrubs were created and bitumen was placed as road base in a portion of the property. A semi-trailer owned by [REDACTED] has also been stored on the affected area.

[REDACTED] of [REDACTED] is reasonably believed to be responsible for the damage on land owned by [REDACTED] at [REDACTED].

Significance of habitat

Native vegetation cleared on the property consists of two mapped plant community types (PCTs): PCT 1642 - Scribbly Gum - Red Bloodwood - Old Man Banksia heathy woodland of southern Central Coast and PCT 1699 - Heath-leaved Banksia - Coral Fern wet heath on sandstone ranges of the lower Central Coast. Based on [REDACTED] Biodiversity Certification Assessment Report – [REDACTED] Oct 2019, the property is known to contain the following threatened species:

- *Hibbertia procumbens* (Spreading Guinea Flower)

2. REASONS FOR VIEW FORMED

I, [REDACTED], Compliance & Regulation Officer, Hunter Central Coast Branch Biodiversity and Conservation Division, am satisfied that the following has been damaged:

- a plant that is of a threatened species on the Property, namely, *Hibbertia procumbens*



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(Spreading Guinea Flower)

in or as a result of the commission of an offence against Section 2.2 Part 1a of the Biodiversity Conservation Act 2016.

In order to:

maintain, remediate or restore the damaged area, habitat, plant, animal or vegetation concerned

I, [REDACTED], Compliance & Regulation, Hunter Central Coast 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 five (5) 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 two areas indicated in the Attachment 1 with vertex points indicated in the table at Attachment 2.

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

3.1 Requirements

- 3.1.1 Milestone 1 – Removal of trailer body from The Property.
- 3.1.2 Milestone 2 - Chip and spread all vegetation stockpiles at The Property.
- 3.1.3 Milestone 3 – Removal of bitumen from The Property.
- 3.1.4 Milestone 4 – Installation of a temporary fence along the boundary between [REDACTED] and The Property.
- 3.1.5 Milestone 5 – Monitor and control weeds over remediation areas for a period of 5 years
- 3.1.6 The Remediation Order will remain in force unless amended or revoked by the Department.
- 3.1.7 The Remediation Order requires photographic and written records to be kept by the Remediator that are to be submitted to the Department on the completion of each milestone.
- 3.1.8 The Remediator must advise the landowner prior to conducting any remediation works on the property.



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3.1.9 Section 11.18 of the BC Act provides that if you fail to comply with the remediation order, the Environment Agency Head may authorise any other person to enter the land concerned and carry out all or part of the specified remediation work. The Environment Agency Head may recover the cost of that remediation work from the person given the remediation order in any court of competent jurisdiction as a debt due by that person to the Crown.

3.1.10 All reporting must be scanned and emailed to hunter.compliance@environment.nsw.gov.au or sent by Registered Post to:

██████████,

Compliance & Regulation, Hunter Central Coast
Biodiversity and Conservation | Department of Planning and Environment
Locked Bag 1002 Dangar 2309

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Milestones

Table 1: Milestones required for Remediation Order. (Refer to attachment 1 for Remediation Order Area)

Milestone	Methodology	Date for completion
1 - Removal of semi-trailer from Remediation Order Area	Semi-trailer to be removed with no further disturbance to vegetation and with minimal impact to soils at the site and avoiding registered Aboriginal sites	6 months from date of order
2 - Mulching of vegetation stockpiles at Remediation Order Area	Mulching to occur with no further disturbance to vegetation and with minimal impact to soils at the site. Any stumps or logs too large to chip may be removed from the property at the discretion of [REDACTED]. Avoiding registered Aboriginal sites	6 months from date of order
3 - Removal of bitumen from Remediation Order Area	Bitumen removal to occur with no further disturbance to vegetation and with minimal impact to soils at the site and avoiding registered Aboriginal sites	6 months from date of order
4 – installation of fencing between [REDACTED]	Temporary fencing to be installed using 3 strands of 2.5mm medium tensile galvanised wire with star picket spacing of 5 meters and strainer posts every 5 th picket. Avoiding registered Aboriginal sites	6 months from date of order
5 – Monitor and control weeds over Remediation Order Areas	Establish monitoring points and provide annual reporting to the department showing that weeds are being controlled for a term of 5 years from the date of this order.	Annually for a period of 5 years from date of order



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DEFINITIONS

In this Order, the following definitions apply:

Term	Definition
AHIMS	Aboriginal Heritage Information Management System managed by Heritage NSW
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> .
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> .
NV Act	The <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> .
Registered Aboriginal sites	Being sites [REDACTED], [REDACTED] and [REDACTED] registered under <i>National Parks and Wildlife Act 1974</i> in AHIMS
Remediation Area	The areas located on the property shown schematically on the map in Attachment 1 Remediation Area 2 is outlined in blue and being parts of Lots 512 and 513 DP 727686. The Remediation Area is defined by GPS points listed as a table in Attachment 1.
Remediator	[REDACTED]
Reporting period	Reporting period means each annual period from the commencement of this Order.
Term	Means 5 years for Remediation Order Area
The Department	The NSW Department of Planning and Environment.
The Property	[REDACTED] owned land at [REDACTED] and [REDACTED] at [REDACTED]



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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 or 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).
- It is an offence to contravene or obstruct remediation work (section 11.22 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 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.

[Redacted]

[Redacted]
Senior Team Leader Compliance & Regulation
Hunter Central Coast Branch
Biodiversity and Conservation Division
Department of Planning and Environment
(by Delegation)

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Attachment 1. Map of the Remediation Order Area showing location of Registered Aboriginal sites

