



ORDER ISSUED TO:

[REDACTED]
[REDACTED]
[REDACTED]

Order Number: DOC22/909096
CCMS Case Ref. No.: 202103056
Issue Date: **27 October 2022**
Property: [REDACTED] (The property)

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

BY EMAIL: [REDACTED]

Date of issue: **27 October 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>.

1. DEPARTMENT OF PLANNING AND ENVIRONMENT OBSERVATIONS

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

Under the Local Land Services Act it is an offence pursuant to clear native vegetation in a regulated rural area contrary to section 60N of the LLS Act.



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Information and evidence obtained to date, including inspections, interviews and aerial assessment indicates that damage occurred on the Property to Category 2 native vegetation on/between April and August 2021. The damage caused to category 2 native vegetation comprised of clear felling approx. 4.89 hectares of woodland vegetation (where shrubs/trees are generally closer than 70m). Information and evidence obtained to date also indicates that the damage occurred in or is a result of, clearing of native vegetation contrary to section 60N of the LLS Act and that none of the available defences listed in the BC Act and/or Part 5A LLS Act and associated regulations in relation to the offence apply.

Accordingly, the Property is taken to be Category 2 – Regulated Land in accordance with section 60I(1)(a) of the Local Land Services Act.

2. REASONS FOR VIEW FORMED

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

- a) native vegetation on category 2-regulated land under Part 5A of the LLS Act, namely approximately 4.89 Hectare of category 2 land.

in or as a result of the commission of an offence against Part 5A of the LLS Act or the regulations under that Part.

In order to:

- a) control, abate or mitigate the damage to the area, habitat, plant, animal or vegetation concerned; and
- 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 20 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 appendix 1 as ‘remediation area’.

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

3.1 Requirements

- 3.1.1 **Before 31st January 2023** you must submit a Remediation Plan for the Remediation Area to [REDACTED] Senior Team Leader Compliance and Regulation.
- 3.1.2 The Remediation Plan must be prepared by an accredited person in accordance with section 6.10 of the BC Act. A public register is available: <https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>
- 3.1.3 The Remediation Plan must demonstrate how the Remediator will restore the Remediation Area towards benchmark condition for the South East Dry Sclerophyll Forests vegetation class of the Sydney Basin IBRA region Interim Biogeographic Regionalisation for Australia (IBRA) region at Table 1.



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- 3.1.4 The Remediation Plan must include restoration targets, expressed in the same form as the benchmark condition at Table 1, for year one (1), five (5), ten (10), fifteen (15), twenty (20), fifty (50) and ninety-nine (99).
- 3.1.5 The Remediation Plan must be drafted for the Term.
- 3.1.6 The Remediation Plan is subject to the approval of the Department.
- 3.1.7 The Remediation Plan will remain in force unless amended or revoked by the Department.
- 3.1.8 The Remediation Plan must include a monitoring and reporting regime, where records are made by the Remediator and an annual report is submitted to the Department.
- 3.1.9 The approved Remediation Plan must be implemented by the Remediator(s) for the Term and will become an annexure to this Order.
- 3.1.10 Within 14 days of this order you must erect signage so that any person entering the Remediation Area becomes aware of the Remediation Area and does not use the land in a manner that would contradict the Remediation Plan.
- 3.1.11 You must inform all purchasers of the land of this Order.
- 3.1.12 You must notify the Environment Agency Head within 14 days if you intend on selling the land subject to this Order.
- 3.1.13 All reports must be scanned and emailed to [REDACTED]@environment.nsw.gov.au or sent by Registered Post to:

Senior Team Leader, Compliance and Regulation
 Department of Planning and Environment
 PO Box 733
 Queanbeyan NSW 2630

VEGETATION CLASS BENCHMARKS

Table 1: Benchmark condition for the South East Dry Sclerophyll Forests vegetation class of the Sydney Basin IBRA region.

Benchmark attribute	Benchmark value	Unit of measure
Tree Richness	5	The number of native tree species within a plot of area 0.04 ha
Shrub Richness	20	The number of native shrub species within a plot of area 0.04 ha
Grass and Grass-like Richness	8	The number of native grass and grass-like species within a plot of area 0.04 ha
Forb Richness	9	The number of native forb species within a plot of area 0.04 ha
Fern Richness	2	The number of native fern species within a plot of area 0.04 ha
Other Richness	4	The number of native species within the other growth form group within a plot of area 0.04 ha
Tree Cover	70	The total foliage cover of native tree species within a plot of area 0.04 ha
Shrub Cover	40	The total foliage cover of native shrub species within a plot of area 0.04 ha
Grass and Grass-like Cover	14.0	The total foliage cover of native grass and grass-like species within a plot of area 0.04 ha



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Forb Cover	4.0	The total foliage cover of native forb species within a plot of area 0.04 ha
Fern Cover	1.0	The total foliage cover of native fern species within a plot of area 0.04 ha
Other Cover	1.0	The total foliage cover of native species within the other growth form group within a plot of area 0.04 ha
Total Length Fallen Logs	45	The length of fallen logs within a plot of area 0.1 ha
Litter Cover	65	The % cover of litter is assessed as the average percentage ground cover of litter recorded from five 1m x 1m plots evenly located along a transect that bisects the 0.1 ha plot

DEFINITIONS

In this Order, the following definitions apply:

Term	Definition
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 and Environment.
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> .
Remediation Area	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]
Reporting period	Reporting period means each annual period from the commencement of this Order.
Suitably qualified person	A person with appropriate qualifications, training and at least five (5) years of experience relevant to the nominated subject matters to give authoritative assessment, advice and analysis. For this Order this specifically relates to restoration ecology.
Term	Means 20 years.
The Property	[REDACTED]

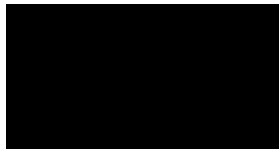
WARNING AND INFORMATION ABOUT THIS ORDER

- 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.



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- 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.



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



Attachment:

1. Map of the Remediation Area appendix 1.



Appendix 1

Legend

-  Remediation Area
-  Property Boundary



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



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