

Remediation Order



ORDER ISSUED TO:

To the Proper Officer

[Redacted]
[Redacted]
[Redacted]

Notice Ref: DOC18/242326
Case Ref: 04961-2016
Date: 12 April 2019

BY: Registered post (CC by email to Mr [Redacted], solicitor for [Redacted])

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

BACKGROUND

- A. The Office of Environment and Heritage (**OEH**) has responsibility for the enforcement of the now repealed *Native Vegetation Act 2003 (NV Act)*.
- B. The NV Act was repealed on 25 August 2017. However, pursuant to clause 58 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017 (BC (S&T) Regulation)*, the repeal of the NV Act does not affect any offence against that Act, or the regulations under that Act, that was committed before the repeal, and the provisions of the NV Act relating to proceedings for an offence, issuing of penalty notices for an offence, and the making of a court order in relation to an offence continue to apply.
- C. Pursuant to clause 54 of the BC (S&T) Regulation, remediation orders under Division 4 of Part 11 of the *Biodiversity Conservation Act 2016 (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.
- D. Pursuant to section 11.15 of the BC Act, if the Chief Executive of OEH is satisfied that damage has occurred in or as a result of the commission of an offence against the NV Act, the Chief Executive may order a person to carry out specified remediation work in a specified manner and within a specified time.
- E. Senior Team Leaders, Compliance and Regulation, Conservation and Regional Delivery hold delegated authority on behalf of the Chief Executive of OEH for the purposes of section 11.15 of the BC Act.
- F. [Redacted] holds the position of Senior Team Leader, Compliance and Regulation - North West, Conservation and Regional Delivery, within OEH.
- G. [Redacted] is the current owner of Property [Redacted], in the Moree Plains Local Government Area (**the Property**) mapped on **Attachment A**. The property is comprised of:

- i) [Redacted] [Redacted]
- [Redacted] [Redacted]
- [Redacted] [Redacted]
- [Redacted] [Redacted]
- [Redacted] [Redacted]

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BASIS FOR ISSUING REMEDIATION ORDER

- H. OEH has investigated a report of clearing of native vegetation on the Property between 29 November 2015 and 6 April 2016.
- I. Under the NV Act, it was an offence pursuant to section 12 that native vegetation be cleared; except in accordance with development consent granted in accordance with the Environmental Planning and Assessment Act 1979 (EP&A Act), or a property vegetation plan issued under the NV Act.
- J. Information and evidence obtained to date, including an assessment of aerial and satellite imagery, a site inspection undertaken by ecological experts and interviews with the Director and an employee of [REDACTED], indicates that damage, comprising the clearing of native vegetation, occurred on the Property between 29 November 2015 and 6 April 2016.
- K. The information and evidence obtained to date also indicates that:
- x) The clearing occurred in the areas of interest marked on the map at **Attachment B (the Damaged Area)**;
 - xi) The species of native vegetation cleared included, but was not limited to, Coolibah, Weeping Myall, Bimble Box, Carbeen and River Red Gums;
 - xii) The clearing involved the removal of native vegetation by mechanical means and the poisoning of native vegetation through the application of herbicide; and
 - xiii) After the clearing was carried out, the Damaged Area was cropped.
- L. The work required by this Order provide for the remediation and restoration of vegetation removed from the Damaged Area.

OPINION

- M. I, [REDACTED], Senior Team Leader, Compliance and Regulation - North West, am satisfied that remnant native vegetation has been damaged as a result of the commission of an offence against section 12 of the NV Act.

ORDER TO CARRY OUT REMEDIATION WORK

- N. I, [REDACTED], Senior Team Leader, Compliance and Regulation - North West, 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:

1) REMEDIATION AREA

- a) In this Order, **Remediation Area A** means the area as defined in the attached map marked **Attachment C**.
- b) **Remediation Area B** means the areas as defined in the attached maps marked **Attachment C** and **D**.
- c) **Remediation Areas** means both **Remediation Area A** and **Remediation Area B**.
- d) This remediation order requires the Remediator to inform the Environment Agency Head of any change in the ownership or occupancy of the land concerned, to the extent that the person subject to the requirement is aware of the change.

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2) DURATION

- a) This Remediation Order will be in force for 20 years unless amended or revoked.

3) REMEDIATION WORK

Cultivation

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

Soil disturbance

- c) Soil disturbance in the Remediation Areas is prohibited. Consent may be sought from OEH to carry out remediation work involving soil disturbance.

Native vegetation remediation

- d) Native vegetation is to be allowed to regenerate in Remediation Area A as a priority method of remediation. Unless otherwise specified under this Order.
- e) 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.
 - Installation of new agricultural infrastructure.

Exotic flora

- f) If any exotic flora or weeds defined as 'Priority Weeds' are identified within the Remediation Areas; the exotic flora 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.

Pest animals

- g) The Remediator must take all reasonable steps to control pest animals within the Remediation Areas, by any approved means.

Stock

- h) All stock must be excluded from Remediation Area A within seven days from the issue of this Order.
- i) If stock is found within Remediation Area A, the stock must be removed as soon as practicable.
- j) If necessary, fences are to be erected to ensure the exclusion of stock from Remediation Area A.
- k) If, at any time, the Remediator becomes aware that any fencing does not continue to exclude stock, the Remediator must replace or repair the fence as soon as practicable.

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- l) After 5 years of compliance with this Order, the Remediator may apply to OEH for consent to undertake sustainable grazing in Remediation Area A.
- m) If any such application is approved by OEH, this Remediation Order may be varied to permit a sustainable grazing regime.
- n) Sustainable grazing is permitted within Remediation Area B.

Fire

- o) The Remediator must take all reasonable steps to prevent fire occurring within the Remediation Areas.

Hazards, chemicals and waste

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

4) INSPECTIONS AND RECORDS

- a) The Remediator must inspect the Remediation Areas four times each year, with a minimum of 80 days between each inspection for the purposes of determining:
 - The percentage of ground cover that is comprised of exotic plants and Priority Weeds.
 - If fencing continues to meet the requirements of this Order.
 - If any stock has impacted the Remediation Areas.
 - The presence of pest animals in the Remediation Areas.
 - If there is an increased risk of wild fire within the Remediation Areas.
- b) The following records must be kept by the Remediator for all inspections:
 - The date(s) on which the inspection was undertaken.
 - The name of the person who undertook the inspection.
 - Observations made during the inspection.
 - Details of any required work within the Remediation Areas.
 - The date(s) of that work.
- c) All records required to be kept by this Order must be:
 - Accurate.
 - In a legible form.
 - Kept for the duration of the Remediation Order.

5) REPORTING

- a) The Remediator must prepare and submit an **Initial Works Report** to OEH by six weeks after issue of this Order. This report must contain:
 - Confirmation of the exclusion of stock and dates of any actions taken to remove stock.
 - The percentage of ground cover that is comprised of exotic plants and priority weeds.
 - An assessment of pest animal presence within the Remediation Areas.
 - Advice of any completed, required, or proposed work within the Remediation Areas.
- b) The Remediator must prepare and submit a **Monitoring Report** to OEH by 12 months after issue of this Remediation Order and annually thereafter.

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c) Reports can be submitted to OEH using any of the following methods:

- By post or courier to:

Senior Team Leader
Compliance and Regulation
Conservation & Regional Delivery NW
P.O. Box 2111
Dubbo NSW 2830

OR

- By email to:

ROG.North@environment.nsw.gov.au

Marked to the attention of the Senior Team Leader Compliance and Regulation

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6) DEFINITIONS

In this order, the following definitions apply:

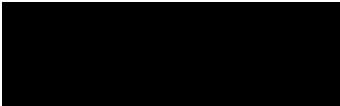
Term	Definition
BC (S&T) Regulation	<i>Biodiversity Conservation (Savings and Transitional) Regulation 2017</i>
BC Act	<i>Biodiversity Conservation Act 2016</i>
Damaged Areas	Areas where native vegetation was cleared in contravention of section 12 of the <i>Native Vegetation Act 2003</i>
Clearing	Has the same meaning as defined in the <i>Native Vegetation Act 2003</i>
Endangered Ecological Community	Has the same meaning as defined in the <i>Biodiversity Conservation Act 2016</i>
Exotic flora	Plant species that are not "native vegetation"
Native vegetation	Has the same meaning as defined in the <i>Native Vegetation Act 2003</i>
NV Act	<i>Native Vegetation Act 2003</i>
OEH	The NSW Government Office of Environment and Heritage
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 <i>Biosecurity Act 2015</i> - list available at: http://weeds.dpi.nsw.gov.au/
Remediation Areas	Means the areas located on the Properties shown schematically on the map in Attachment A, C and D outlined in green and marked "Remediation Areas"
Remediator	The addressee of this Order
Reporting period	Means each annual period from the commencement of this Order
Stock	Means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, domesticated pigs and domesticated goats); it does not include native wildlife
Sustainable grazing	Means grazing by livestock, and the management of grasslands used for grazing, that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation.
The Property	As defined in this Order
Waste	Has the same meaning as defined in the <i>Protection of the Environment Operations Act 1997</i>

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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.
- If you fail to comply with this Order the Chief Executive of OEH 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).
- 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.
- OEH 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.



12/4/2019



Senior Team Leader
Compliance & Regulation North West
Conservation & Regional Delivery
Office of Environment & Heritage

(by Delegation)

- Attachments:**
- A – Map of the Property**
 - B – Map of the Damaged Areas**
 - C – Detailed Map of North West ‘Remediation Areas’**
 - D – Detailed Map of South East ‘Remediation Areas’**

