

Reference Number: DOC12/21563

File number: FIL12/3487

Date: 5 June 2012

NOTICE OF VARIATION OF DIRECTION TO CARRY OUT REMEDIAL WORK

BACKGROUND

- A. The Office of Environment and Heritage (**OEH**) within the Department of Premier and Cabinet (**DPC**) has responsibility for the administration and enforcement of the *National Parks and Wildlife Act 1974* (**the Act**) and associated Regulations.
- B. Jon Keats, holds the position of Manager Biodiversity Management Unit North East within OEH.
- C. Jon Keats holds delegated authority on behalf of the Director-General of DPC for the purposes of section 91K of the Act.
- D. Under section 91K(3) of the Act the Director-General of DPC of OEH may vary a direction to carry out remedial works issued under section 91K of the Act.
- E.  is the leaseholder of the land (**the Leaseholder**) identified as Lot 2 of Deposited Plan number 1151473 (**the land**). The land is identified in Attachment 1 of this Direction.
- F. The Current Leaseholder was issued with a direction to carry out remedial work (**the Direction**) on 8 June 2011 for vegetation clearing which resulted in damage to the habitat of the *Placostylus bivaricosus* (**Lord Howe Island Placostylus**) and the *Puffinus carneipes* (**Flesh-footed Shearwater**) by removing the preferred habitat conditions of these species.
- G. The Lord Howe Island Placostylus is listed as an endangered species in Part 1 of Schedule 1 of the *Threatened Species Conservation Act 1995* (**TSC Act**).
- H. The Flesh-footed Shearwater is listed as a vulnerable species in Part 1 of Schedule 2 of the TSC Act.
- I. On or about 8 February 2012, the Lord Howe Island Board (**LHIB**) staff entered the Remediation Area on the land and removed three dead trees and one live tree for the

purposes of firewood collection. The removal of the trees contravened Condition 7 of the Direction being "Prohibition on removal or damage of native vegetation".

- J. The removal of the trees by the LHIB staff has impacted on the habitat values of the Flesh-footed Shearwater, specifically:
- I. The loss of woody material has reduced habitat structure (via root systems and dead wood on ground) where the shearwater can build burrows for nesting.
 - II. The activity of cutting down the trees and then wheel barrowing them on site is likely to have caused soil compaction. The compaction of soil can reduce the likelihood of shearwaters being able to dig burrows for nesting; and
 - III. The removal of the trees has reduced forest structure (canopy and ground layer) of the site. The removal of trees from a rehabilitation area is contrary to the aim of rehabilitation, particularly the one live tree which was part of the canopy and would have provided protection for the area to rehabilitate.
- K. The LHIB has acknowledged that the removal of the trees has impacted on the habitat values of the Remediation Area and the LHIB are willing to repair the damage that has been caused. Attachment 1 outlines the works to be undertaken by the LHIB within the remediation area and the location of those works.

NOTICE OF VARIATION OF DIRECTION FOR REMEDIAL WORK

- L. I, Jon Keats, Manager Biodiversity Management Unit North East, vary the direction to carry out remedial work made under section 91K of the Act, dated 8 June 2011 and applying to the land as follows:
- 1) The Leaseholder must allow Lord Howe Island Board staff reasonable access and entry to the Remediation Area for the purposes of undertaking rehabilitation works as outlined in Attachment 1.

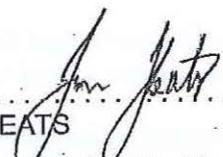
OPERATION OF NOTICE

- M. This notice of variation takes effect from the date of this notice variation

WARNING AND INFORMATION ABOUT THIS DIRECTION

- It is an offence against section 91Q of the Act to fail to comply with this Direction. The maximum penalty that a court may impose for this offence is, for a corporation, \$220,000 plus \$22,000 for each day the offence continues and for an individual, \$110,000 plus \$11,000 for each day the offence continues.
- If you fail to comply with this Direction DPC may authorise any other person to carry out the works and may then recover the cost from you (section 91O of the Act).
- This Direction is issued under section 91K of the Act.
- Under section 91K(3) of the Act this Direction may be varied or revoked by a further notice.
- Under section 91T(1) of the Act, if you are aggrieved by the decision to make this Direction you may appeal to the Land and Environment Court within 30 days of this Direction being served on you. However, even if an appeal is lodged, you must comply with this Direction, unless the Court orders otherwise.

- Under section 188E of the Act, your obligation to comply with the requirements of this direction continues until the direction is complied with, even if the due date for compliance is passed.
- DPC may conduct inspections to determine whether this Direction is being complied with.
- Words and expressions have the same meaning as words and expressions used in the Act, except where a word is specifically defined in this Direction.
- For the purposes of this Direction, "national parks legislation" means the Act and the regulations under the Act.
- A Remediation Direction will not negate the potential for prosecution. A Remediation Direction is separate to any potential prosecution.


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JON KEATS

Manager Biodiversity Management Unit North East
(by Delegation)

Attachments:

1. LHIB Rehabilitation Works

ATTACHMENT 1

RESTORING FLESH-FOOTED SHEARWATER HABITAT IMPACTED THROUGH REMOVAL OF TWO DEAD BLACKBUTT *CRYPTOCARYA TRIPLINERVIS* TREES BY LORD HOWE ISLAND BOARD STAFF AT THE EASTERN END OF [REDACTED] REMEDICATION DIRECTION SITE AT LOT 2 OF DEPOSITED PLAN NUMBER 1151473.

WORK ACTION PLAN TO GUIDE ON-GROUND WORKS.

LORD HOWE ISLAND BOARD

MAY 2012

- 1. Identification of the Lord Howe Island Board (LHIB) restoration site within [REDACTED] Remediation Direction site at Lot 2 of Deposited Plan number 1151473.**
 - 1.1 The restoration site is located at the eastern end of [REDACTED] Remediation Direction site at Lot 2 of Deposited Plan number 1151473 and is shown in the attached plan. The LHIB restoration site will be clearly marked on the ground by the placement of fluorescent spray painted wooden stakes.
 - 1.2 The restoration area is approximately 30 metres long x 21 metres wide as shown on the attached plan.
- 2. Duration of restoration works**
 - 2.1 The LHIB must undertake and maintain ecological restoration works identified in accordance with this report until 15th September 2013. After this period the site will be managed by [REDACTED] in accordance with the Office of Environment and Heritage Remediation Direction (Ref number: DOC11/11424, File number: LI 003).
- 3. Ecological restoration works to be undertaken on the LHIB restoration site at Lot 2 of Deposited Plan number 1151473.**
 - 3.1 Any ecological restoration works must only be undertaken at the LHIB restoration site at Lot 2 of Deposited Plan number 1151473 between 15th June 2012 to 15th September 2012 and 15th May 2013 and 15th September 2013 to avoid any impact to nesting Flesh-footed Shearwater *Puffinus carneipes*.
 - 3.2 The LHIB must provide [REDACTED] with at least 24 hours notice (by telephone or in writing) prior to entry to the restoration site
 - 3.3 The LHIB restoration site must have at least two sweeps to control all weeds within these periods for each year. Methods will include hand removal, cut and paint, snip and drip and foliar spray depending on the weed species present.
 - 3.4 Between 15th June 2012 to 15th September 2012 a minimum of 30 metres of felled timber must be placed on the ground in the approximate location where the two Blackbutt trees were felled and removed. This timber must be brought onto the site by hand or wheel burrow in 1.00 – 1.50 metre lengths. The timber used for this action must be certified to be free of African Big Headed Ants prior to transporting by the LHIB Ranger and its felling/removal must have prior approval by the LHIB CEO.

- 3.5 To reduce the impact of soil compaction within the LHIB restoration site a total of 50 native plants must be planted between 15th June 2012 to 15th September 2012. These must be planted with wetted water crystals and watered in and fertilised at the time of planting. Holes must be dug with a tree hole auger.
- 3.6 To improve nesting opportunities for Flesh-footed Shearwaters at the LHIB restoration site, a minimum of 20 holes with a diameter no greater than 15cm and up to 200 metre depth must be opportunistically dug across the site at 45° to the surface soon after the site is planted.
- 3.7 All LHIB staff that work on the site must be supervised by a suitably qualified Bush Regenerator to ensure all works and methods will not impact native plant or animal species and assist in the sites ecological restoration.
- 3.8 Detailed Daily Record Sheets as shown in Attachment 2 must be filled out for each days work.
- 3.9 Monitoring of restoration works must incorporate set photo points from the South east and North west corners of the LHIB restoration site and submission of Daily Record Sheets. Photos must be taken at commencement and end of each year's work (i.e. 15th June 2012, 15th September 2012, 15th May 2013 and 15th September 2013)
- 3.10 No access to the restoration site is permitted between 15th September 2012 and 15th May 2013 or following 15th September 2013.

4. Reporting

- 4.1 The LHIB must prepare a Monitoring Report which provides a summary of works completed by LHIB, daily record sheets and photographs as detailed in 3.8. Two separate reports must be provided to OEH by 30 October 2012 and 30 October 2012.

LHIB Work Area

Plan of the LHIB Work Area, showing the LHIB Work Area, Lot 2 DP 1151473, and the Cadastre. The LHIB Work Area is shown in white, Lot 2 DP 1151473 is shown in grey, and the Cadastre is shown in black.

LHIB Work Area
Lot 2 DP 1151473
Cadastre



29 May 2012

