

# Remediation Order

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Office of  
Environment  
& Heritage

## ORDER ISSUED TO:

██████████  
████████████████████  
████████████████████

Notice Number: CIRaM Notice No. C0003248.  
Case Reference Number: DOC17/559176  
Date: 11 September 2018

## By Registered Mail

### 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The Office of Environment and Heritage (**OEH**) has responsibility for the administration and enforcement of the now repealed *Native Vegetation Act 2003 (NV Act)* and Parts 7-9 of the *National Parks and Wildlife Act 1974 (NPW Act)*.
- B. The *Native Vegetation Act 2003 (NV Act)* was repealed on 25 August 2017.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 section 12 of 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 under s12 *Native Vegetation Act 2003*, the Chief Executive may order a person to carry out specified remediation work in a specified manner and within a specified time.
- E. Troy Northey, holds the position of Senior Team Leader Compliance & Regulation, Regional Operations Division within the OEH.
- F. Troy Northey holds delegated authority on behalf of the Chief Executive of OEH for the purposes of section 11.15 of the BC Act.

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G. [REDACTED] is the current landholder of [REDACTED] [REDACTED] (the Property), being the person who is the owner of land and has lawful management or control, of the Property.

## BASIS FOR ISSUING REMEDIATION ORDER

- H. OEH is investigating a report of illegal land clearing on the Property between 31 May 2017 and 25 July 2017.
- I. Information to date, including site inspections, examination of aerial photographs and a voluntary record of interview dated the 8 September 2017 with [REDACTED] indicates that the unlawful clearing of native vegetation including but not limited to; Square-fruited Ironbark (*Eucalyptus tetrapleura*) a listed Vulnerable Species, Spotted gum - grey box - grey ironbark – dry open forest of the Clarence Valley, Forest red gum swamp box of the Clarence Valley lowlands of the NSW North Coast bioregion, occurred on the property between 31 May 2017 and 25 July 2017. During this period, approximately 13.7 hectares (ha) was unlawfully cleared on the property.
- J. On 15 August 2017, Aerial Photo Interpretation (API) of the Property was undertaken. The API was undertaken by assessing images captured between 25 May 2017 and 30 July 2017 (using available imagery at the time). The assessment identified that the clearing event was undertaken between 31 May 2017 and 25 July 2017. The Native Vegetation Regulatory Map is Category 2, Sensitive regulated land for the clearing event area.
- K. Under s12 of the NV Act, native vegetation must not be cleared except in accordance with a development consent granted in accordance with the Act or a property vegetation plan. The investigation by OEH concluded that the native vegetation on the Property has been cleared in contravention of the Act and no property vegetation plan was in place. Available defences and exclusions listed in the native vegetation legislation have been discounted.
- L. The works required by this Order provide for the repair and rehabilitation of unlawfully cleared remnant native vegetation and regeneration of native vegetation within the designated Remediation Area within the Property.

## OPINION

I, Troy Northey Senior Team Leader Compliance & Regulation, Conservation and Regional Delivery Division, am satisfied that native vegetation has been cleared on the property as a result of the commission of the offence under section 12 of the NV Act.

## ORDER TO CARRY OUT REMEDIATION WORK

- M. In order to:
  - a) Repair damage caused by the clearing; and
  - b) rehabilitate land affected by the clearing (including the taking of steps to allow the land to regenerate);

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I, Troy Northey, Senior Team Leader, Conservation and Regional Delivery Division within OEH, 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 15 years from the date of this order.

## 1 REMEDIATION WORK

1.1 In this Order, the Remediation Area is defined in Attachment 1.

## 2 EXCLUSION OF REMEDIATION AREA

### Demarcating the Remediation Area

- 2.1 The Remediator must demarcate the boundaries of the Remediation Area as shown on the map in Attachment 1 **15 October 2018** for the purposes of protecting the area from any potential disturbances.
- 2.2 The demarcation of the Remediation Area must be:
  - a) Designed and implemented to ensure the protection of the Remediation Area at all times;
  - b) Implemented at regular intervals of not more than 50 metres using star pickets or posts;
  - c) Be highly visible from a distance;
  - d) Maintained to ensure protection of the Remediation Area;
- 2.3 If at any time the Landholder becomes aware that the demarcation of the Remediation Area does not continue to meet the requirements referred to in conditions 2.2, the Landholder must replace or repair the demarcation as soon as practicable to ensure it meets the requirements referred to in conditions 2.2.
- 2.4 The Landholder must inspect the Remediation Area four (4) times each reporting period, with a minimum of 80 days between each inspection for the purposes of determining whether the demarcation of the Remediation Area continues to meet the requirements referred to in condition 2.2.

### Stock management

- 2.5 The Landholder must ensure the Remediation Area is kept free of any type of stock at all times.
- 2.6 Any stock found within the Remediation Area must be removed by the Landholder as soon as practicable and in any event within one day of becoming so aware.
- 2.7 If at any time stock is found within the Remediation Area the landholder must carry out measures as soon as practicable to comply with the requirements referred to in conditions 2.2.
- 2.8 The Landholder must inspect the Remediation Area four (4) times each reporting period, with a minimum of eighty (80) days between each inspection for the purposes of determining whether stock is present within the Remediation Area.

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- 2.9 If at any time stock is present on the Property or around the Remediation Area the Landowner must construct a fence around the boundary of the Remediation Area as shown on the map at Attachment 1 for the purposes of excluding stock (“the fence”).
- 2.10 The fence must be constructed as follows:
- 4 strand wire
  - The highest and lowest most strand must be constructed of plain wire (not barbed or similar material);
  - The middle 2 strands must be barbed wire;
  - The bottom strand is to be not less than 20 cm above ground level;
  - Posts must be installed every 5 metres; and
  - Any gates in the fence must be constructed with self-closing locks.
- 2.11 The landholder must ensure that all gates in the fence:
- Remain closed and locked at all times: or
  - Open only to allow access required by this direction.
- 2.12 If at any time the Landholder becomes aware that the fence does not continue to meet the requirements referred to in conditions 2.10 and 2.11, the Landholder must replace or repair the fence as soon as practicable to ensure it meets the requirements referred to in conditions 2.10 and 2.11.
- 2.13 The Landholder must inspect the Remediation Area four (4) times each reporting period, with a minimum of 80 days between each inspection for the purposes of determining whether the fence continues to meet the requirements referred to in conditions 2.10 and 2.11.

### **3 WEED, EXOTIC SPECIES, COMMERCIAL CROP AND NON-NATIVE PLANT MANAGEMENT**

- 3.1 The landowner must not plant exotic species, commercial crops and non-native plants in the Remediation Area at any time.
- 3.2 If at any time any exotic species, commercial crops or non-native plant species are found within the Remediation Area, the Landholder must destroy all such 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 and in any event within 14 days of becoming aware.
- 3.3 The Landholder must inspect the Remediation Area four (4) times each reporting period with a minimum of 80 days between each inspection for the purposes of determining whether exotic species, commercial crops or non-native plant species are present within the Remediation Area.

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## 4 RECORDS

- 4.1 The following records must be kept by [REDACTED] in respect of any inspections required by this Order:
- the date(s) on which the inspection was undertaken;
  - the name of the person who undertook the inspection; and
  - the type of inspection undertaken.
- 4.2 The following records must be kept by [REDACTED] in respect of any work undertaken as a result of any inspection(s):
- details of any required work within the Remediation Area;
  - the date(s) this work was undertaken; and
  - the date on which this work was completed.
- 4.3 All records required to be kept by this Order must be:
- true, accurate and correct;
  - in a legible form, or in a form that can readily be reduced to a legible form;
  - kept for at least 4 years after the inspection or event to which they relate took place; and
  - produced in a legible form to any authorised officer of OEHL who asks to see them.

## 5 REPORTING

- 5.1 [REDACTED] must prepare and submit an **Initial Works Report**:
- By Registered Post to:  
Senior Team Leader Compliance and Regulation  
Regional Operations Division, North East  
Office of Environment and Heritage  
Locked Bag 914  
Coffs Harbour NSW 2450  
or
  - By courier or by hand to:  
Senior Team Leader Compliance and Regulation  
Regional Operations Division, North East  
Office of Environment and Heritage  
Level 8, 24 Moonee Street  
Coffs Harbour NSW 2450

by **15 December 2018**

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5.2 [REDACTED] must prepare and submit a **Monitoring Report**:

a) By Registered Post to:

Senior Team Leader Compliance and Regulation

Regional Operations Division, North East

Office of Environment and Heritage

Locked Bag 914

Coffs Harbour NSW 2450

or

b) By courier or by hand to:

Senior Team Leader Compliance and Regulation

Regional Operations Division, North East

Office of Environment and Heritage

Level 8, 24 Moonee Street

Coffs Harbour NSW 2450

by **15 December 2018**, and **15 December** each year thereafter, a report for each "reporting period".

5.3 The Monitoring Report must include but not be limited to:

- a) A summary of the work or activities undertaken during the reporting period to remediate the Remediation Area in accordance with this Order; and
- b) Determinations of all inspections carried out in accordance with this Order during the reporting period.

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## 6 DEFINITIONS

In this order, the following definitions apply:

<p><b>“Exotic species”</b></p>	<p>means species introduced from outside of the area concerned; in the case of New South Wales, from overseas and/or interstate.</p> <p><b>Note:</b> The source of this definition is Harden, G.W. ed. 1990-2002. <i>Flora of New South Wales: Volumes 1 – 4</i>, University of NSW Press.</p>
<p><b>“Remediation Area”</b></p>	<p>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]</p>
<p><b>“Remediator”</b></p>	<p>means [REDACTED]</p>
<p><b>“Reporting period”</b></p>	<p>means each annual period commencing from 1 April 2018 for the duration of this Order.</p>
<p><b>“Stock”</b></p>	<p>means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, pigs and goats). It does not include native wildlife.</p>
<p><b>“Weed”</b></p>	<p>means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i></p>

## 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. The maximum penalty that a court may impose for this offence is:
  - for a corporation, \$660,000 plus \$66,000 for each day the offence continues, and
  - for an individual, \$132,000 plus \$13,200 for each day the offence continues.
- If you fail to comply with this Order the Chief Executive of OEHL or their 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).
- 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 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.

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- 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.

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Troy Northey  
Senior Team Leader  
Regional Operations Division  
(by Delegation)

# Remediation Order

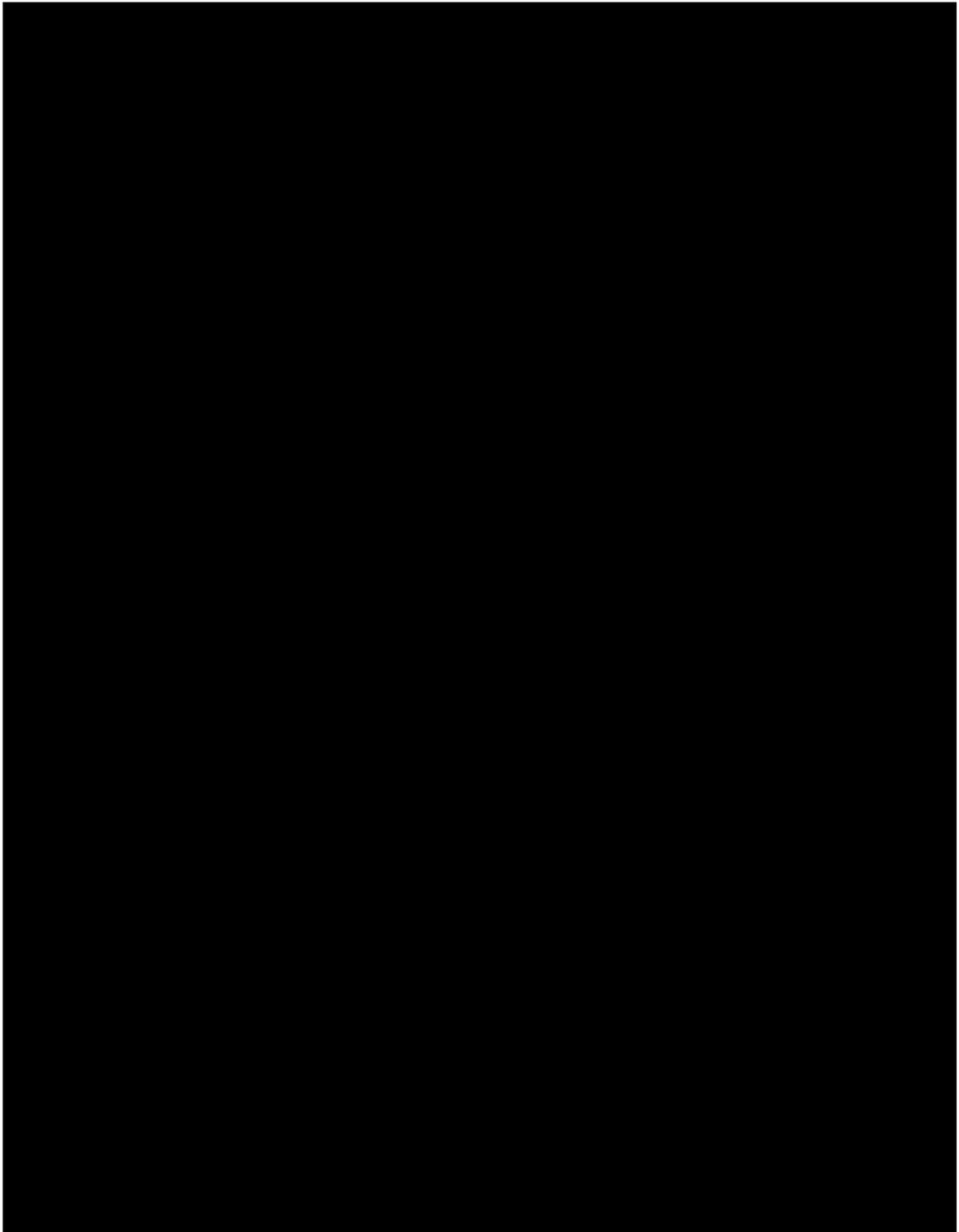
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**Attachment:**

1. Attachment 1: Map of the Remediation Area.



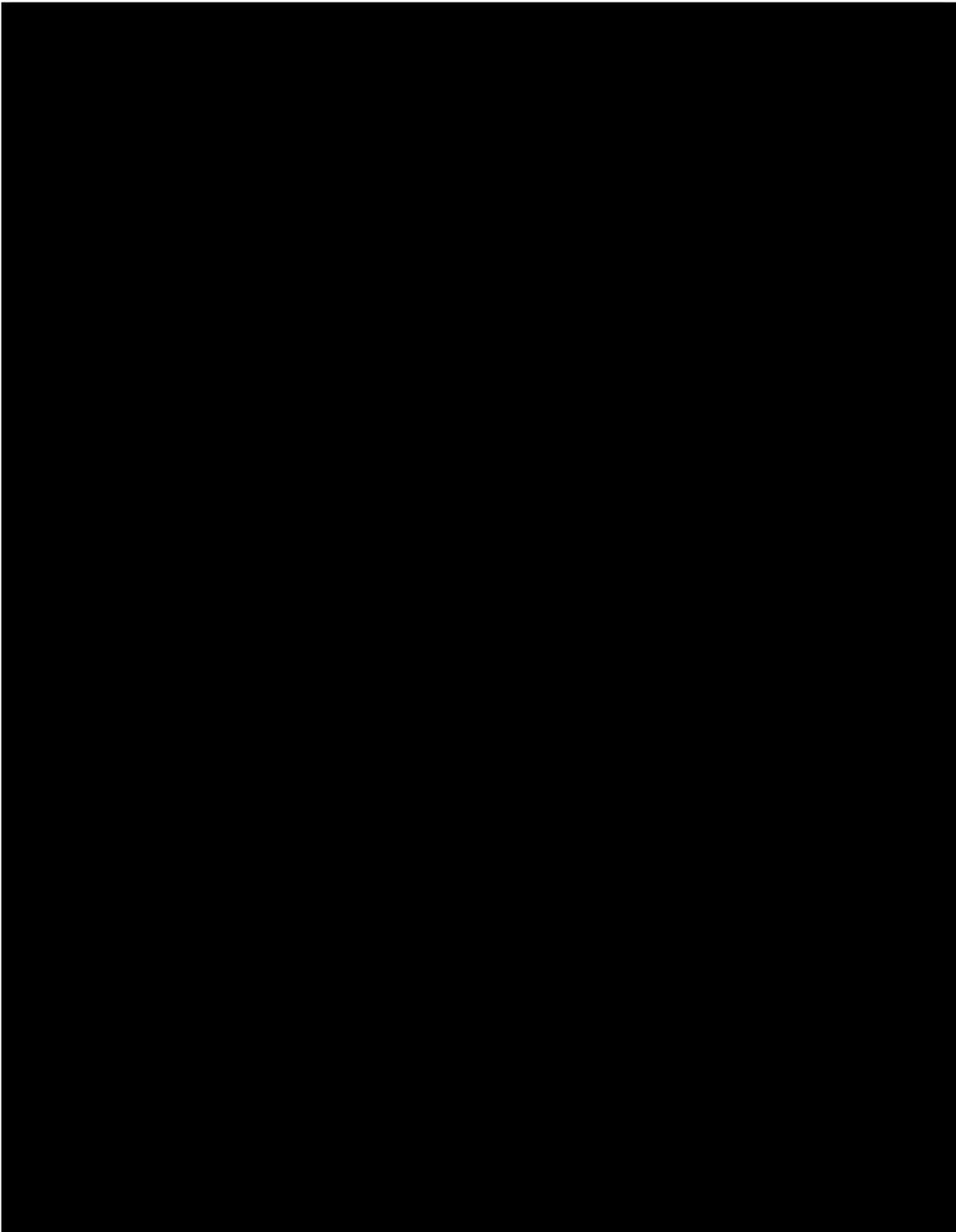
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## 2. Attachment 2: Map of Remediation Area



# Remediation Order

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## ATTACHMENT 3 - INITIAL WORKS REPORT

LANDHOLDER	
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AS PER REPORTING REQUIREMENTS SET OUT IN THIS REMEDIATION ORDER, THE INITIAL WORKS REPORT MUST BE RECEIVED BY OEH BY 15 DECEMBER 2018.

Failure to submit this Initial Works Report by 15 December 2018 may result in:

- the issue of a Penalty Notice for \$1320 (individuals) or \$6600 (corporations);

OR

- prosecution.

### WARNING AND INFORMATION

Section 11.22 of the *Biodiversity Conservation Act 2016* offence of contravening remediation order or obstruction remediation work, a person must not, without reasonable excuse, contravene a remediation order to which the person is subject, maximum penalty (includes additional daily penalty): Tier 2 monetary penalty, for a corporation \$660,000, plus \$66,000 for each day the offence continues and for an individual, \$132,000, plus \$13,200 for each day the offence continues.

Please submit your completed Initial Works Report to:

- By Registered Post to:
  - Senior Team Leader Compliance & Regulation
  - Regional Operations Division, North East
  - Office of Environment and Heritage
  - Locked Bag 914
  - Coffs Harbour NSW 2450or
- By courier or by hand to:
  - Senior Team Leader Compliance & Regulation
  - Regional Operations Division, North East
  - Office of Environment and Heritage
  - Level 8, 24 Moonee Street
  - Coffs Harbour NSW 2450

# Remediation Order



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## A Initial Works Summary

Please provide the following information regarding compliance with the Remediation Order issued to [REDACTED]

The Remediation Order relates to the following area of land:

[REDACTED] ("the Property").

Please:

- provide details of activities undertaken; and
- provide dates as appropriate.

Note: the definitions in this Report are the same as in the Remediation Order.

<b>DEMARCATING THE REMEDIATION AREA</b>	
Was demarcation of boundary of the Remediation Area as shown on the map at Attachment 1.	Date
If fencing was constructed around the boundary of the Remediation Area, please provide an explanation below.	
<b>STOCK MANAGEMENT</b>	
What date were all stock removed from the Remediation Area?	Date
If all stock were not removed from the remediation area by the date specified in 2.6 of the Remediation Order, please provide an explanation below.	

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## B Signature and Certification

This Initial Works Report may only be signed by a person(s) with legal authority to sign it as set out in the categories below. **Please tick (✓) the box** next to the category that describes how this Initial Works Report is being signed.

If the Landholder is:	the Initial Works Report must be signed and certified:
an individual	<input type="checkbox"/> by the individual Landholder
a company	<input type="checkbox"/> by affixing the common seal in accordance with Corporations Act 2001, or <input type="checkbox"/> by 2 directors, or <input type="checkbox"/> by a director and a company secretary, or <input type="checkbox"/> if a proprietary company that has a sole director who is also the sole company secretary – by that director.

*I/We declare and certify that the information in this Initial Works Report is true and correct*

SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME:  
(printed) \_\_\_\_\_

NAME:  
(printed) \_\_\_\_\_

POSITION: \_\_\_\_\_

POSITION: \_\_\_\_\_

DATE:     \_\_\_/\_\_\_/\_\_\_

DATE:     \_\_\_/\_\_\_/\_\_\_

SEAL (if signing under seal)

# Remediation Order

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## ATTACHMENT 4 - MONITORING REPORT

LANDHOLDER	██████████
REPORTING PERIOD	15 December 2018 to 15 December 2019

**AS PER REPORTING REQUIREMENTS SET OUT IN THIS REMEDIATION ORDER, THE MONITORING REPORT MUST BE RECEIVED BY OEH BY 15 DECEMBER 2019**

**Failure to submit this Monitoring Report by 15 December 2019 may result in:**

- the issue of a Penalty Notice for \$1320 (individuals) or \$6600 (corporations);
- OR**
- prosecution.

### WARNING AND INFORMATION

Section 11.22 of the *Biodiversity Conservation Act 2016* offence of contravening remediation order or obstruction remediation work, a person must not, without reasonable excuse, contravene a remediation order to which the person is subject, maximum penalty (includes additional daily penalty): Tier 2 monetary penalty, for a corporation \$660,000, plus \$66,000 for each day the offence continues and for an individual, \$132,000, plus \$13,200 for each day the offence continues.

Please submit your completed Monitoring Report by Registered Post, to:

a) By Registered Post to:

Senior Team Leader Compliance & Regulation  
Regional Operations Division, North East  
Office of Environment and Heritage  
Locked Bag 914  
Coffs Harbour NSW 2450  
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b) By courier or by hand to:

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Regional Operations Division, North East  
Office of Environment and Heritage  
Level 8, 24 Moonee Street  
Coffs Harbour NSW 2450

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## A Monitoring Summary

Please provide the following information regarding compliance with the Remediation Order issued to [redacted]

The Remediation Order relates to the following area of land: [redacted] ("the Property").

Please:

- tick (✓) the appropriate box where a question is asked; and
- provide details of activities undertaken; and
- provide dates as appropriate.

Note: the definitions in this Report are the same as in the Remediation Order.

STOCK MANAGEMENT			
<b>Inspections</b>		Yes	No
Have inspections for stock in the Remediation Area taken place as required by 2.8 of the Remediation Order? (tick ✓ Yes or No)		<input type="checkbox"/>	<input type="checkbox"/>
Dates of stock inspections			
If there have been no inspections for stock in the Remediation Area, provide an explanation below.			
Was any stock present within the Remediation Area? (tick ✓ Yes or No)		Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
<i>Provide details of the type and amount of stock present</i>			
<b>Removal</b>		Yes	No
Has stock been removed from the Remediation Area? (tick ✓ Yes or No)		<input type="checkbox"/>	<input type="checkbox"/>
<i>Provide details of how stock entered the Remediation Area.</i>			

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<i>Provide details of the method of removal and the amount and type of stock removed (including dates)</i>	<i>Date(s) of removal</i>

<b>WEED, EXOTIC SPECIES, COMMERCIAL CROP AND NON-NATIVE PLANT MANAGEMENT</b>			
<b>Inspections</b>		Yes	No
Have inspections for exotic species, commercial crops and non-native plants in the Remediation Area taken place as required by 3.3 of the Remediation Order? (tick ✓ Yes or No)		<input type="checkbox"/>	<input type="checkbox"/>
Dates of weed inspections			
If there have not been inspections, provide an explanation below.			
Were there any exotic species, commercial crops or non-native plants present in the Remediation Area? (tick ✓ Yes or No)		Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
If there were exotic species, commercial crops or non-native plants present in the Remediation Area, describe the species present and their extent.			
Have any exotic species, commercial crops or non-native plants been removed from the Remediation Area as required by 3.2 of the Remediation Order (tick ✓ Yes or No)		Yes	No
		<input type="checkbox"/>	<input type="checkbox"/>
Provide details of the method of <i>destroying weeds or removal of weeds</i> (including dates) and the <i>amount and type of weeds destroyed or removed</i> .			
Provide details of the method of <i>destroying or removal of exotic species, commercial crops or non-native plants</i> and the <i>amount and type of exotic species, commercial crops and non-native plants destroyed or removed</i> (including dates)		<i>Date(s)</i>	

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## B Signature and Certification

This Monitoring Report may only be signed by a person(s) with legal authority to sign it as set out in the categories below. **Please tick (✓) the box** next to the category that describes how this Monitoring Report is being signed.

If you are uncertain about who is entitled to sign or which category to tick, please contact us on telephone (02) 6659 8200

If the Landholder is:	the Monitoring Report must be signed and certified:
an individual	<input type="checkbox"/> by the individual Landholder
a company	<input type="checkbox"/> by affixing the common seal in accordance with Corporations Act 2001, or
	<input type="checkbox"/> by 2 directors, or
	<input type="checkbox"/> by a director and a company secretary, or
	<input type="checkbox"/> if a proprietary company that has a sole director who is also the sole company secretary – by that director.

*I/We declare and certify that the information in this Monitoring Report is true and correct*

SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME:  
(printed) \_\_\_\_\_

NAME:  
(printed) \_\_\_\_\_

POSITION: \_\_\_\_\_

POSITION: \_\_\_\_\_

DATE:     \_\_\_/\_\_\_/\_\_\_

DATE:     \_\_\_/\_\_\_/\_\_\_

SEAL (if signing under seal)