

Remediation Order



Office of
Environment
& Heritage

ORDER ISSUED TO:

[REDACTED]
[REDACTED]

Notice Number: 01019-2019-2
Case Reference Number: 01019-2019
Date: 13 June 2019

BY Email to:

[REDACTED]
[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 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.
- B. Pursuant to section 11.15 of the BC Act, if the Chief Executive of OEH 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 Chief Executive may order a person to carry out specified remediation work in a specified manner and within a specified time.
- C. The power to issue a remediation order under the BC Act may be exercised for the purposes of the BC Act or Part 5A of the LLS Act (section 11.2 BC Act).
- D. Adam Vey, holds the position of Senior Team Leader, Compliance & Regulation (South East) within OEH.
- E. Senior Team Leaders holds delegated authority on behalf of the Chief Executive of OEH for the purposes of section 11.15 of the BC Act.
- F. [REDACTED] is the current owner of [REDACTED], Parish of Benandarah, County of St Vincent, Eurobodalla Local Government Area at [REDACTED] (the Property).

BASIS FOR ISSUING REMEDIATION ORDER

- G. OEH has investigated a report of native vegetation clearing on the Property between 1 December 2018 and 20 March 2019.
- H. Under the LLS Act, it is an offence to clear native vegetation in a regulated rural area contrary to section 60N of the LLS Act.

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- I. Information and evidence obtained to date, including the review of aerial imagery, site inspections, and the responses to the Notices to Provide Information and Records indicates that clearing of native vegetation occurred on the Property between 1 December 2019 and 20 March 2019. Information and evidence obtained to date also indicates that the clearing of native vegetation was contrary to section 60N of the LLS Act and that none of the available defences listed in the Act and associated Regulations in relation to the offence apply.
- J. The works required by this remediation order provide for the mitigation of the clearing undertaken at the property.

OPINION

- K. I, Adam Vey, Senior Team Leader, Compliance & Regulation (South East), am satisfied that native vegetation has been cleared as a result of the commission of an offence against section 60N of the LLS Act.

ORDER TO CARRY OUT REMEDIATION WORK

- L. In order to:

- a) control, abate and mitigate the vegetation that has been cleared;

I, Adam Vey, Senior Team Leader, Compliance & Regulation (South East), order [REDACTED] 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, Remediation Area means the blue hatched areas labelled 'Remediation Area' on the attached map which is labelled 'Attachment 1 - OEH Remediation Area Map'.
- 1.2 To mitigate the clearing that has occurred, [REDACTED] must retain vegetation within the areas labelled 'Remediation Area' on the map labelled 'Attachment 1 - OEH Remediation Area Map'.
- 1.3 If at any time any weeds, exotic species, commercial crops or non-native plant species are found within the Remediation Area, [REDACTED] must destroy all such weeds, 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, or as directed by OEH.
- 1.4 If at any time any pest herbivores are found within the Remediation Area, [REDACTED] must make attempts to control the pest herbivores by non-mechanised means.
- 1.5 [REDACTED] must ensure fallen timber and debris present in the Remediation Area are retained for the purposes of habitat.
- 1.6 [REDACTED] must not pick, cut, poison, remove or harm native vegetation in the Remediation Area.

** There is an existing fire trail through the northern area which is depicted on 'Attachment 1 - OEH Remediation Area Map'. This can be maintained not beyond a maximum width of 6m and consistent with the location outlined as per 'Attachment 1 - OEH Remediation Area Map'.

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2 DEFINITIONS

In this order, the following definitions apply:

<p>“Exotic species”</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>Note: 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>“Native vegetation”</p>	<p>Means indigenous vegetation that includes trees (including any sapling or shrub and any scrub), understorey plants and ground cover (being any type of herbaceous vegetation).</p>
<p>“Pest herbivores”</p>	<p>means hares, rabbits, and deer but does not include stock.</p>
<p>“Remediation Area”</p>	<p>means the blue hatched area on the attached map labelled ‘Attachment 1 – OEH Remediation Area Map’, being part of Lot [REDACTED]</p>
<p>“Weed”</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 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).
- If you fail to comply with this Order, any person may seek an order from the 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 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.
- OEHL may conduct inspections to determine whether this Order is being complied with.

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- 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.

Adam Vey

Senior Team Leader

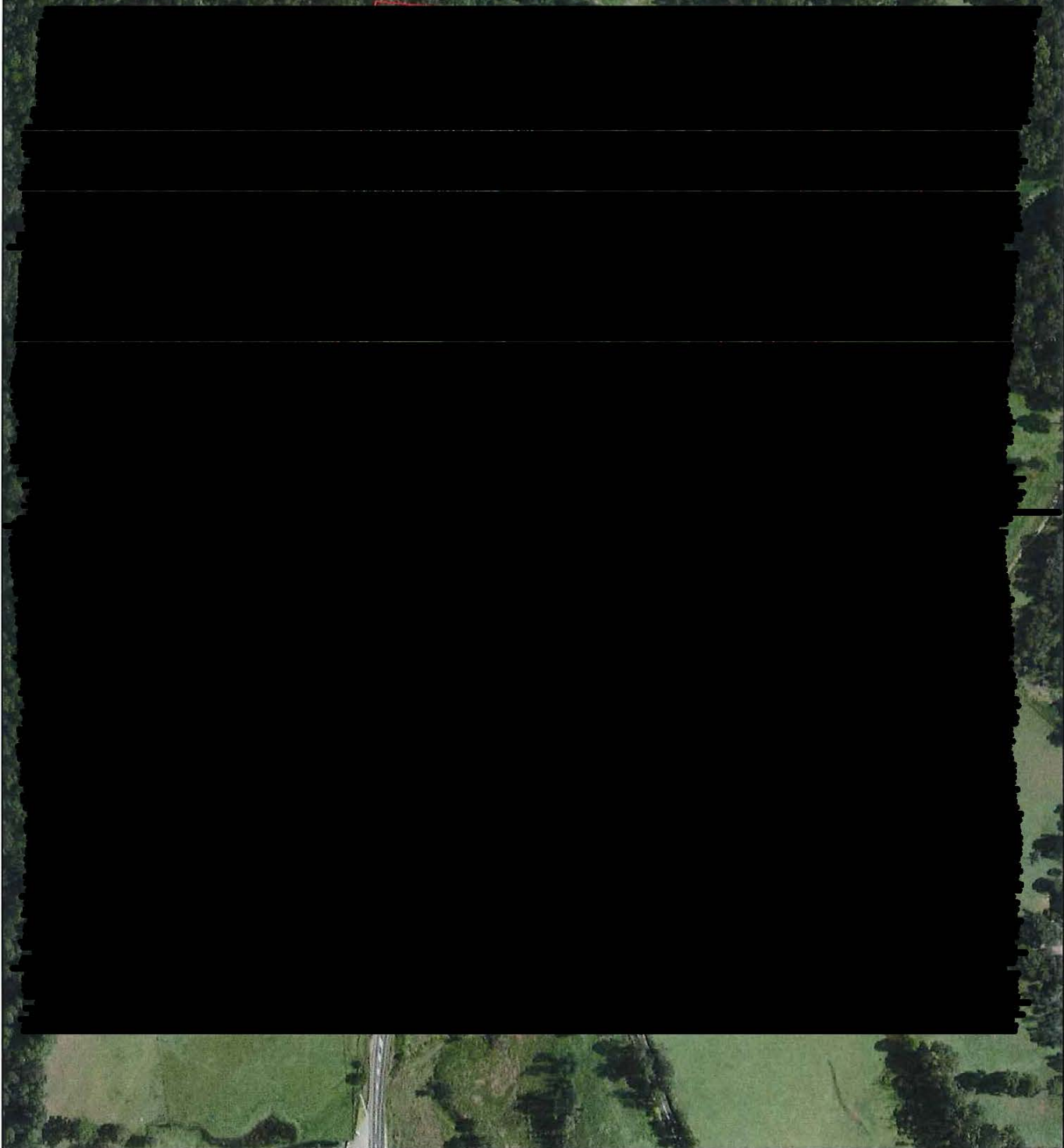
Compliance & Regulation (South East)

(by Delegation)




Attachment:

1. Attachment 1 - OEH Remediation Area Map

Attachment 1 OEH Remediation Area Map



Legend

-  [Redacted]
-  Remediation Area
-  Existing Fire Trail



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

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Imagery: LPI 2014



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