



Department of Planning Industry & Environment

Enforceable undertaking

Undertaking given under Section 13.27 of the Biodiversity Act 2016
To the Secretary,
Department of Planning and Environment

By



ENFORCEABLE UNDERTAKING

PURPOSE

This Undertaking is given to the Department of Planning Industry and Environment (**Department**) pursuant to section 13.27 of *the Biodiversity Conservation Act 2016 (NSW) (BC Act)*, in connection with the matter in relation to which the Environment Agency Head has a function under the BC Act.

SECTION A – GENERAL INFORMATION

1. PERSON(S) GIVING THE UNDERTAKING

Name: [REDACTED]

Address: [REDACTED]

2. BACKGROUND

It is alleged by the Department that between May 2017 and July 2018 that [REDACTED] ([REDACTED]) contravened section 12 of the Native Vegetation Act 2003 (**NV Act**) (as it then was, it is now repealed) and section 60N of Local Land Services Act 2013 (**LLS Act**) in that [REDACTED] caused native vegetation to be cleared on land known as [REDACTED] (being [REDACTED] in [REDACTED]) (**Property**). [REDACTED] is the Registered Proprietor of the Property.

3. DETAILS OF THE ALLEGED CONTRAVENTION

[REDACTED] caused 11.32 hectares of native vegetation to be cleared from the Property. It is alleged that approximately 3.66 hectares were cleared contrary to the NV Act and 7.66 hectares were cleared contrary to the LLS Act.

4. RESPONSE

In response to the Department's investigation, [REDACTED] has:

4.1 acknowledged that it is alleged that [REDACTED] conduct contravened section 12 of the NV Act and section 60N of the LLS Act; and

4.2 offered this Undertaking to the Department.

5. DETAILS OF ENVIRONMENTAL DAMAGE THAT AROSE FROM ALLEGED CONTRAVENTION

The area of land was cleared of native vegetation and the damage included the associated loss of biodiversity. Remnant vegetation was converted to intensive agricultural use, namely blueberry farming. Of this land, 0.01 hectare was vulnerable regulated land and 0.07 hectare was sensitive regulated land.

6. COMMENCEMENT OF THIS UNDERTAKING

This Undertaking comes into effect when:

6.1 this Undertaking is executed by [REDACTED]; and

6.2 this Undertaking so executed is accepted by the Environment Agency Head of the Department (**Commencement Date**).

7. DETAILS OF THE RESTITUTION THAT WILL BENEFIT THE ENVIRONMENT AND THE COMMUNITY

For the purposes of achieving a positive environmental outcome and improving biodiversity viability within the Property, [REDACTED] undertakes that [REDACTED] will:

- 7.1 make reasonable efforts to manage the vegetation in the area identified by **Schedule 1** in a manner expected to promote vegetation integrity in that area, including by:
 - 7.1.1 controlling weed impacts in the area identified by **Schedule 1**, including by chemical spraying and mechanical weed removal,
 - 7.1.2 controlling pest impacts in the area identified by **Schedule 1**, including by reducing numbers of exotic predators.
- 7.2 not clear or authorise the clearing of native vegetation, or cause or permit any other person to clear native vegetation, in the area identified by **Schedule 1**, save for the purposes for which the clearing of native vegetation is permitted in **Schedule 2**.
- 7.3 provide, at [REDACTED] own expense, a copy of any documents required by the Department.
- 7.4 notify the Department within 30 days of entering a Contract for the Sale of Land to sell the Property.

8. ACKNOWLEDGMENTS

[REDACTED] acknowledges that:

- 8.1 The Department will make publicly available the Media Release identified at **Schedule 3**;
- 8.2 The Department will from time to time inspect the Property to ensure compliance with the Undertaking and will take further compliance action where necessary. The Department will provide [REDACTED] with 7 days' notice prior to inspecting the Property;
- 8.3 This Undertaking in no way detracts from the rights and remedies available to any other person arising from the alleged conduct;
- 8.4 Native vegetation means any of the following types of plants native to New South Wales:
 - 8.4.1 trees (including any sapling or shrub or any scrub);
 - 8.4.2 understorey plants;
 - 8.4.3 groundcover (being any type of herbaceous vegetation);
 - 8.4.4 plants occurring in a wetland.
- 8.5 Clearing native vegetation means any one or more of the following:
 - 8.5.1 cutting down, felling, uprooting, thinning or otherwise removing native vegetation,

SECTION D-Department of Planning, Industry and Environment acceptance of undertaking

I accept this Undertaking as an Enforceable Undertaking pursuant to section 13.27 of the *Biodiversity Conservation Act 2016*

Signed:



Name:



Position:

Executive Director, Biodiversity and Conservation Division

Department of Planning, Industry and Environment

(by Delegation)

Date:

16/12/2021

Schedule 1

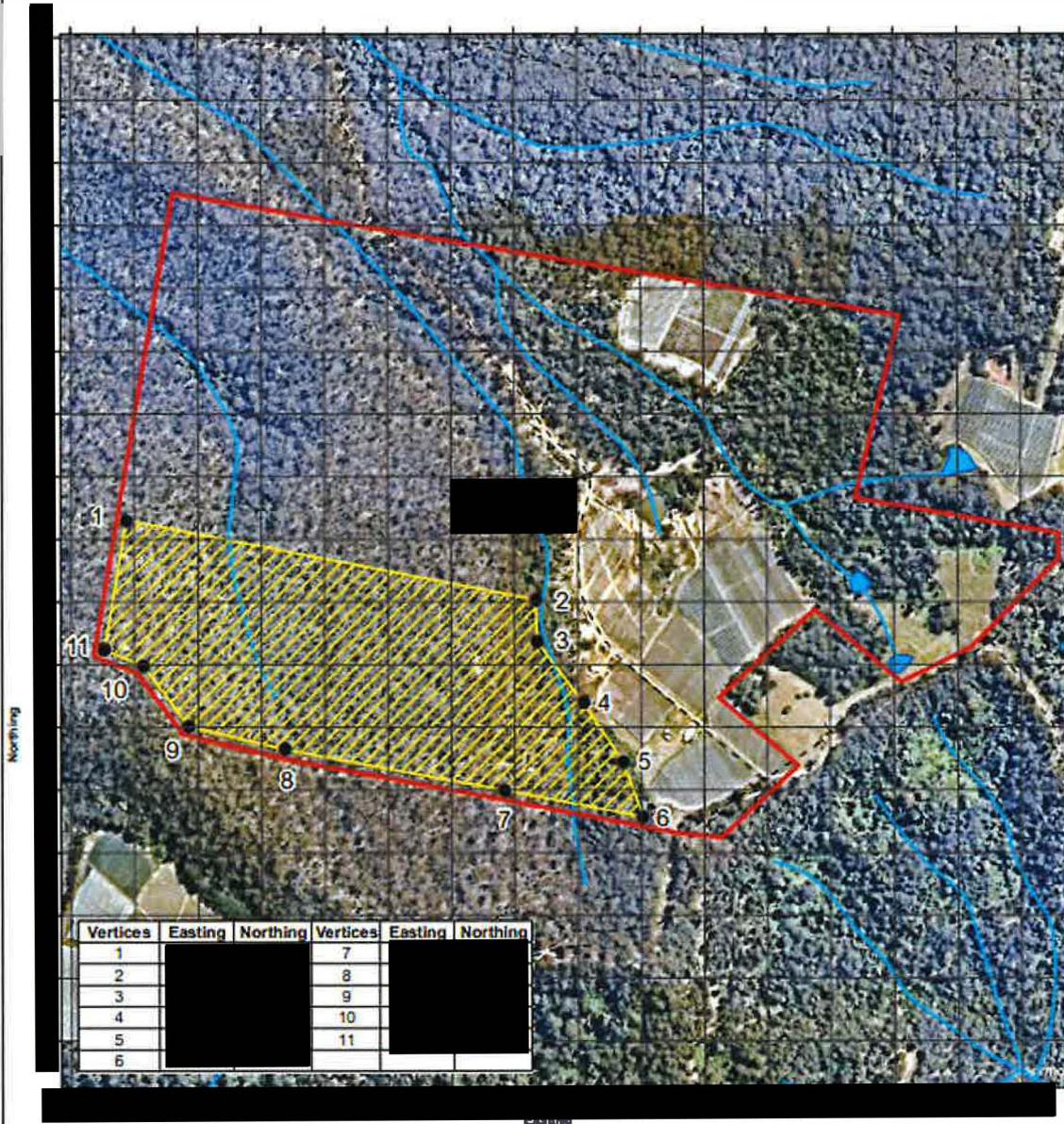
Attachment 1: Enforceable Undertaking



Planning,
Industry &
Environment

Property Owners: [REDACTED]
Enforceable Undertaking: DOC21/1084093

County: [REDACTED]
Parish: [REDACTED]
LGA: [REDACTED]



Vertices	Easting	Northing	Vertices	Easting	Northing
1	[REDACTED]	[REDACTED]	7	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]	8	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]	9	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]	10	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]	11	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]			

Legend

- Enforceable Undertaking vertices
- ▨ Enforceable Undertaking Area, 22.58ha
- The Property



Map Datum/Projection: GDA 94 MGA Zone 56
Date: 8 December 2021
Plan Version No. DOC21/1084093_Y1

Base imagery captured on the 06/10/2021 includes material © Nearmap.

Base cadastral and topographic data supplied by the NSW Department of Customer Service (DCS).

Responsibility lies with the property owner to confirm the accuracy of information supplied by the NSW Department of Customer Service (DCS).

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Schedule 2

Purposes for which clearing of native vegetation is permitted

1. Imminent risk

Clearing of native vegetation that is reasonably necessary to remove or reduce an imminent risk of serious personal injury or damage to property.

2. Environmental protection works

Clearing native vegetation for the purpose of environmental protection works.

Environmental protection works means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes re-vegetation or bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works (within the meaning of the *Coastal Protection Act 1979*).

3. Electricity transmission infrastructure

The clearing of native vegetation for the maintenance of public utilities associated with the transmission of electricity.

The maintenance of those public utilities includes the following activities, but only when those activities are being undertaken by or at the written direction of the body in which the public utility concerned is vested or that has the responsibility for that public utility's safe operation:

- (a) maintaining the necessary safety clearances under power lines (conductors and structures) and around communication sites associated with the supply of electricity,
- (b) minimising fuel loads under power lines to minimise the chance of smoke from a fire resulting in a line trip,
- (c) maintaining existing access roads and tracks.

The maintenance of those public utilities does not include any of the following activities—

- (a) construction of new access roads or tracks,
- (b) removal of low growing groundcover,
- (c) maintaining safety clearances from power lines that exceed either of the following—

- (i) the maximum distance set out in the following table—

Nominal operating voltage of power line	Maximum clearing distance
Not more than 11 kV	20 metres
Above 11 kV up to and including 33 kV	25 metres
Above 33 kV up to and including 66 kV	30 metres
Above 66 kV up to and including 132 kV	45 metres
Above 132 kV up to and including 330 kV	60 metres
Above 330 kV	70 metres

- (ii) the minimum distance that will ensure reliability of supply under all loading and environmental conditions and minimise the risk of arcing.

4. Permanent boundary fence

The clearing of native vegetation for the construction or maintenance of boundary fencing shall be in accordance with the *Rural Boundary Clearing Code* as amended from time to time.

5. Permanent internal or temporary fence

The clearing of native vegetation for the construction or maintenance of fencing (other than boundary fencing) to improve the management of the land, with a maximum distance of clearing for the purposes of a fence not exceeding 6 metres and only for fencing that is reasonably required to be constructed on the land.

6. Farm access track

The clearing of native vegetation for the construction or maintenance of farm tracks, with a total width of clearing not exceeding 6 metres and only if:

- (a) the track is reasonably required to access sites within or on the other side of the land, and
- (b) the route of the track minimises the clearing that is required to be undertaken on the land.

7. Sustainable grazing

Clearing of native vegetation during the course of sustainable grazing.

Sustainable grazing is 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. Management of grasslands includes (without limitation) the over-sowing or fertilisation of grasslands. Sustainable grazing does not include clearing of trees or shrubs in order to facilitate grazing.

8. Collection of firewood

- (1) Clearing native vegetation on land for the purpose of obtaining firewood for use by the landholder on that land or on other land of the landholder.
- (2) Clearing may only be carried out under this clause if the firewood could not be obtained from any other clearing authorised by this Schedule
- (3) The native vegetation must not comprise:
 - (a) a threatened species or part of a threatened ecological community or the habitat of a threatened species under the *Biodiversity Conservation Act 2016*, or
 - (b) the habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*.

This subclause does not apply to habitat that the Owner does not know is habitat of the relevant kind.

- (4) Clearing must not be carried out within the following buffer distances from a water body:

Water body type	Distance within which clearing is not permitted
Unmapped and 1 st order streams	10m
2 nd order stream	20m
3 rd order stream	30m
4 th and 5 th order stream	40m
6 th order stream	50m
Local wetland	20m
Important wetland	50m
Estuarine area	50m

In all cases, buffer distance is to be measured, in the case of a stream – from the top bank of the stream; and in the case of a wetland or estuarine area – from the edge of the wetland or estuarine area.

For the purposes of this Agreement, a stream is an incised watercourse that exhibits the features of a defined channel with bed and banks.

9. Planted native vegetation

- (1) The clearing of native vegetation that has been planted.
- (2) This clause does not authorise clearing:
 - (a) if the native vegetation was planted with the assistance of public funds granted for any purpose other than for forestry purposes, or
 - (b) within a buffer distance from a water body as set out in clause 10 of this Schedule.

10. Water supply and gas supply infrastructure

Clearing native vegetation for the maintenance of public utilities associated with water supply infrastructure and gas supply infrastructure.

The clearing is authorised if carried out by or on behalf of the owner of the infrastructure or by or on behalf of the owner of the land.

11. Telecommunications infrastructure

Clearing native vegetation for the maintenance of telecommunications infrastructure.

The clearing is authorised if carried out by or on behalf of the owner of the infrastructure or by or on behalf of the landholder.

Schedule 3

Media Release

Department of Planning, Industry and Environment



18/11/2021

Unlawful native vegetation clearing results in Enforceable Undertaking for blueberry farmer

A blueberry farmer in the Clarence Valley has entered into an Enforceable Undertaking with the NSW Department of Planning, Industry and Environment following the unlawful clearing of more than 11 hectares of native vegetation on their property.

NSW Department of Planning, Industry and Environment Compliance & Regulation Team Leader Troy Northey said the undertaking commits the landholder to a conservation agreement for their property, which will protect more than 22 hectares of remnant vegetation from clearing for a minimum of 25 years.

"Native vegetation is vital for the health of our environment. It provides habitat for native animals, protects the quality of soils and water and supports agricultural productivity," said Mr Northey.

"It's an offence to clear native vegetation on regulated rural land, unless the appropriate approvals have been granted under the Local Land Services Act (LLS Act)," said Mr Northey.

The LLS Act and the Land Management Code provide landholders with a range of options for undertaking lawful clearing to manage land while responding to environmental risks

"Had the landholder sought and been granted these approvals, clearing could have been targeted to achieve the landholder's primary production goals while minimising impacts on native vegetation, and regulatory action could have been avoided," said Mr Northey.

Under the conservation agreement, the landholder is required to manage and protect biodiversity on the designated land through the control of weeds and introduced pest animal species. The landholder was also required to pay legal costs of approximately \$10,000.

"We are pleased with the outcome of this regulatory action. Not only is the landholder now aware of the rules that exist around the clearing of native vegetation, the Enforceable Undertaking has also enabled the Department to achieve a positive environmental outcome in the local area.

"The long-term conservation of this 22-hectare plot of remnant vegetation will deliver a range of benefits to local wildlife, providing habitat, refuge and perching sites, as well as a bountiful source of food, for native mammals and birds.

"We strongly encourage all landholders to contact Local Land Services (LLS) for advice prior to commencing any land management activities.

"LLS is there to help you understand your land management options and support you to manage your land to ensure more productive farming methods and systems while also protecting the natural environment," said Mr Northey.

Further information can be found on the Local Land Services website at www.lls.nsw.gov.au

An enforceable undertaking is a voluntary and binding agreement to deliver tangible benefits for the environment and community.

Enforceable undertakings are one of a number of tools the NSW Department of Planning, Industry and Environment can use to achieve environmental compliance and is enforceable by the Land and Environment Court.



