



ORDER ISSUED TO:



Order Number: DOC24/523188-2

CCMS Case Ref. No.: 202305768

Issue Date: 14 August 2024

Property:



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

BY: Registered Mail

Date of issue: 14/08/2024

Who are we: The Department of Climate Change, Energy, The Environment and Water 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.

Why we serve remediation orders: Pursuant to section 11.15 of the BC Act, if the Environment Agency Head (the Secretary of the Department of Climate Change, Energy, The Environment and Water) 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 Environment Agency Head may order a person to carry out specified remediation work in a specified manner and within a specified time.

What you are required to do: The works required by this remediation order provide for the control, abatement, and mitigation of the damage and/or maintenance, remediation, restoration of the damaged area of the Property. Section 11.16(2) of the BC Act requires you to carry out remediation work required by this Order.

When are you required to act: Immediately from the Date of Issue.

What happens if you don't comply: 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. Contravention of this Order has a maximum penalty of Tier 2. The maximum penalty that a court may impose for a Tier 2 offence is \$660,000 (plus \$66,000 for each day the offence continues) for a corporation, and \$132,000 (plus \$13,200 for each day the offence continues) for an individual.

What your appeal rights are: Section 11.23(1) of the BC Act allows for a person given a remediation order to appeal against the giving of the Order (or any terms of the Order) to the NSW Land and Environment Court within 30 days of the service of the Order. However, even if an appeal is lodged, you must comply with this

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Order, unless the Court orders otherwise. More information on appeals can be found on the NSW Land and Environment Court website <http://www.lec.justice.nsw.gov.au>.

1. DEPARTMENT OF CLIMATE CHANGE, ENERGY, THE ENVIRONMENT AND WATER OBSERVATIONS

The Department is investigating the clearing of native vegetation and change of land use to horticulture 'Macadamia Plantation' in Category 2 Rural regulated area on (the Property) between July 2019 and September 2023. Under Part 5A Division 3 of the *Local Land Services Act 2013 (LLS Act)* it is an offence to clear native vegetation in a regulated rural area contrary to section 60N of the LLS Act.

Information and evidence obtained to date, including a site inspection, remnant vegetation assessment report, record of interview, indicates that damage occurred on the Property to Category 2 native vegetation between June 2019 and September 2023. The damage caused to 1990 remnant native vegetation comprised of 100% removal of said vegetation total of 5.58 hectares. Information and evidence obtained to date indicates the damage occurred resultant from clearing of native vegetation contrary to section 60N of the LLS Act and that none of the available defences listed in the BC Act and/or Part 5A LLS Act and associated regulations in relation to the offence apply.

It is reasonably believed that [REDACTED], who reside at [REDACTED], purchased the property [REDACTED], with [REDACTED] and as stated is solely responsible for the damage on the property. Evidence collected in the record of interview with [REDACTED] contain clear admissions as to the person[s] responsible for the native vegetation clearing on the property. [REDACTED] admitted during a voluntary interview to engaging, instructing, and remunerating an unknown contractor to carry out the clearing [REDACTED] admitted [REDACTED] cleared a portion of the property [REDACTED] and cleared an additional area 1.07ha for allowable activities, which have been considered.

The Remediation Area is required to be designated as Category 2 – Regulated Land.

2. REASONS FOR VIEW FORMED

I, [REDACTED], Senior Team Leader, am satisfied that the following has been damaged:

- a) Native vegetation on category 2 regulated land under Part 5A of the LLS Act, at [REDACTED], in or as a result of the commission of an offence against Section 60N of the *Local Land Services Act 2013*.

In order to:

- a) maintain, remediate, or restore the damaged area (3.21 hectares) and vegetation concerned.

I, [REDACTED], Senior Team Leader, order [REDACTED] and [REDACTED] (the **Remediator/s**) 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 Fifteen (15) years from the date of this Order.

I, [REDACTED], Senior Team Leader hold delegated authority on behalf of the Environment Agency Head for the purposes of section 11.15 of the BC Act.

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3. REQUIREMENTS – WHAT YOU MUST DO TO COMPLY

In this Order, Remediation Area means the area outlined as in Attachment 1.

This Order must be complied with from the date of the Order for the Term.

3.1 Requirements

- 3.1.1 By 30/11/2024 If you intend to have animals outside the Remediation Area, you must fence the Remediation Area, to control any stock preventing them from entering the Remediation Area.
- 3.1.2 By 30/11/2024 you must remove any or all farming equipment including ploughs, tractors, or any other powered machinery from the Remediation area.
- 3.1.3 By 30/11/2024 you must abate any human disturbances to the remediation area as enacted by the persons named in this order.
- 3.1.4 By 30/11/2024 you must erect signage, so that any persons entering the Remediation Area becomes aware of the remediation Order in force and does not use the land in a manner that would contradict this Order.
- 3.1.5 The demarcation of the Remediation Area must be (please also see point 5 below):
 - a) Designed and implemented to ensure protection of the Remediation area at all times;
 - b) Be visible from a distance of at least 20 metres where clear line of sight exists;
 - c) Maintained to ensure protection and effective demarcation of the Remediation Area for the period of this order.
- 3.1.6 By 30/11/2024 you must remove and prevent weeds by using selective methods of control and eradication. You must undertake weed control every 13 weeks from 31/09/2024. For the purposes of this paragraph “Weeds” means:
 - a) a plant that is a pest as defined by s 15(2) of the *Biosecurity Act 2015*
 - b) the list of High Threat Weeds within the meaning of the Biodiversity Assessment Method (BAM) 2020
 - c) weeds of concern listed by the Local Council pursuant to a power conferred on it by an Act or Regulation of New South Wales; and
 - d) weeds likely to impact on agriculture productivity and defined by the NSW Department of Primary Industries (DPI) or Local Land Services (LLS) pursuant to powers conferred upon them by an Act or Regulation of New South Wales.
- 3.1.7 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 the conditions 3.1.1 to 3.1.6, the

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Landholder must replace the demarcation and/or signage as soon as practicable to ensure it meets the requirements referred to in conditions 3.1.1 to 3.1.6.

- 3.1.8 You or persons directed by you may access the Remediation Area (including access with farm vehicles and equipment) where necessary to carry out ordinary environmental maintenance works within the Remediation Area consistent with conditions 3.1.1 to 3.1.7.

3.2 Reporting Requirements

- 3.2.1. By 30/11/2024 you must submit a letter or email outlining your compliance with 3.1 General Requirements of the Remediation Order.
- 3.2.2. By 30/11/2024 you must submit a letter or email outlining your ongoing compliance with 3.1 General Requirements of the Remediation Order and every year on the 31 July for the duration of the Order. Send letters or email to bac.nebadmin@environment.nsw.gov.au

All reports must be scanned and emailed to bac.nebadmin@environment.nsw.gov.au or sent by Registered Post to:

Senior Team Leader, Compliance and Regulation
Department of Climate Change, Energy, The Environment and Water
Locked Bag 914
Coffs Harbour, NSW 2450

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4. AN EXAMPLE OF HOW YOU CAN COMPLY

One way of achieving compliance with this Order would be to:

1. Erect perimeter fencing around the Remediation Area by 30/11/2024
2. Remove any or all farming equipment including ploughs, tractors, or any other powered machinery from the Remediation area.
3. Control weeds by selectively poisoning and/or manually removing weeds at least once every 13 weeks.
4. Prevent human disturbance to the remediation area for the duration of the order in co-ordination with the Local Land Service who are the property managers.
5. Demarcate the boundaries of the Remediation Area as shown on the map in Attachment 1 for the purposes of protecting the area from any potential disturbances and example place bright coloured star pickets at intervals approximately 25-50 meters depending on the landscape.
6. Send in letter or email reporting measures undertaken to comply with 3.1 (General Requirements) by the 30/11/2024 and every year thereafter.

DEFINITIONS

In this Order, the following definitions apply:

Term	Definition
BC Act	<i>The Biodiversity Conservation Act 2016.</i>
Damage	Damage has the same meaning as defined in section 11.14 of the <i>Biodiversity Conservation Act 2016.</i>
The Department	The NSW Department of Climate Change, Energy, the Environment and Water.
LLS Act	<i>The Local Land Services Act 2013.</i>
Native vegetation	Has the same meaning as defined in Part 5A of the <i>Local Land Services Act 2013.</i>
Order	This document: a Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016.</i>
Remediation Area	The areas located on the Property shown schematically on the map in Attachment 1 outlined in yellow and marked "Remediation Area" being parts of [REDACTED]
Remediators	[REDACTED]
Reporting period	Reporting period means each annual period from the commencement of this Order.
Term	Means the duration of this Order.
The Property	[REDACTED]
Weed	Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015.</i>

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WARNING AND INFORMATION ABOUT THIS ORDER

- If you fail to comply with this Order the Environment Agency Head or his/her 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 NSW 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 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.
- The Department 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 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.

[Redacted signature block]

[Redacted name block]

Senior Team Leader
(by Delegation)

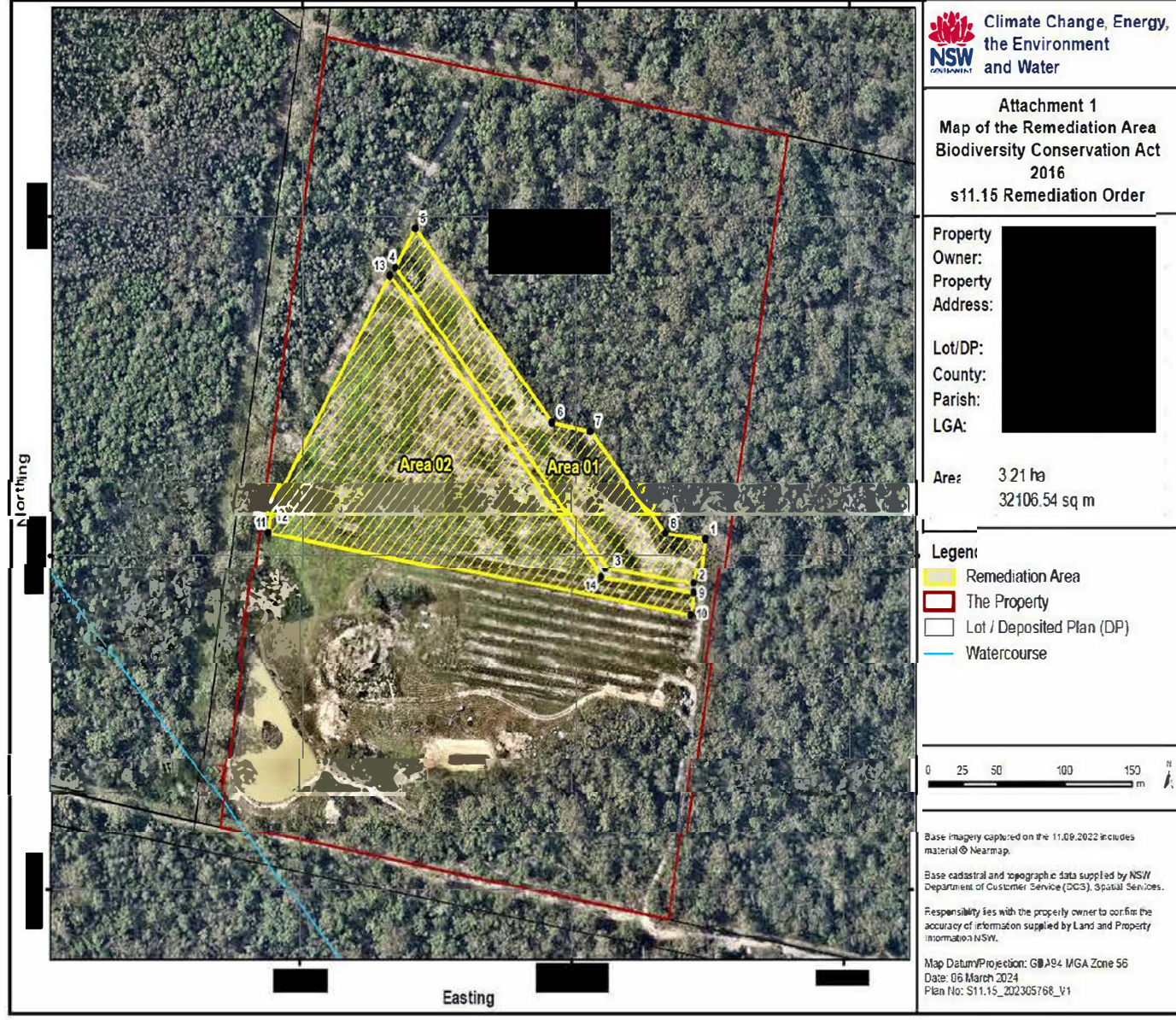
Attachment 1: Map of the Remediation Area

Attachment 2: Design of signage

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Attachment 1:

Map of the Remediation Area and accompanying waypoints





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Numbered Waypoint References

Waypoint	Easting	Northing	Latitude	Longitude
Area 01				
1				
2				
3				
4				
5				
6				
7				
8				
Area 02				
9				
10				
11				
12				
13				
14				

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Attachment 2:

Design of signage

This is a remediation area maintained
in accordance with a remediation order
issued under section 11.15 of the
Biodiversity Conservation Act 2016

www.environment.nsw.gov.au