

Remediation Order



Planning,
Industry &
Environment

ORDER ISSUED TO:

[REDACTED]
[REDACTED]
[REDACTED]

Order Number: DOC20/1018491-1

CCMS Case Ref. No.: I17976-2018

Issue Date: 10 February 2021

Property:

[REDACTED]
[REDACTED]

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

BY: Registered Post

Date of issue: 10 February 2021

Who are we: The Department of Planning, Industry and Environment 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 Planning, Industry and Environment) 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

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Environment Court within 30 days of the service of the Order. However, even if an appeal is lodged, you must comply with this 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 PLANNING, INDUSTRY AND ENVIRONMENT OBSERVATIONS

The Department is investigating a report of clearing of native vegetation in a regulated rural area on the Property between 2 November 2018 and 30 December 2018. Under the *Local Land Services Act 2013*, Part 5A, Division 3 it is an offence pursuant to Clause 60N to clear native vegetation in a regulated rural area without authority.

Information and evidence obtained to date including analysis of imagery, inspections, interviews and collection of physical evidence, indicates that damage occurred on the Property to Category 2 land when native vegetation was cleared between 2 November 2018 and 30 December 2018. The damage caused comprised clearing of Coastal Paperbark Swamp Oak Floodplain Forest and mapped Coastal Wetland under the Coastal Management State Environmental Planning Policy. Information and evidence obtained to date also indicates that the damage occurred in or as a result of clearing of native vegetation contrary to section 60N of the LLS Act and that none of the available defences listed in Part 5A LLS Act and associated regulations in relation to the offence apply.

The Remediation Area is designated on the in force Native Vegetation Regulatory Map, prepared pursuant to Division 2 of the LLS Act, as Category 2 – Sensitive Regulated Land.



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2. REASONS FOR VIEW FORMED

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

- a) a plant or animal that is of or is part of a threatened species or threatened ecological community on the Property, [REDACTED]
- b) native vegetation on category 2-regulated land under Part 5A of the LLS Act, namely, 4.8 hectares 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) Remediate or restore the damaged area, habitat, plant, animal or vegetation concerned;

I, [REDACTED] Senior Team Leader 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 thirteen (13) years from the date of this Order:

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

3. REQUIREMENTS – WHAT YOU MUST DO TO COMPLY

In this Order, Remediation Area means the Remediation Area identified on Attachment 1.

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

3.1 General Requirements

- 3.1.1 By 1 March 2021 you must remove all stock from the Remediation Area, control stock and prevent them from entering the remediation area.
- 3.1.2 By 1 April 2021 you must remove and prevent weeds by using selective methods of poisoning and manual removal. You must undertake weed control every 13 weeks from 1 April 2021.
- 3.1.3 By 15 February 2021 you must abate human disturbances to the Remediation Area.
- 3.1.4 By 1 April 2021 you must erect signage so that any person entering the Remediation Area becomes aware of the Remediation Area and does not use the land in a manner that would contradict this Order.
- 3.1.5 You must inform all purchasers of the land of this Order.
- 3.1.6 You must notify the Environmental Agency Head within 14 days if you intend on selling the land subject to this Order.



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3.2 Reporting Requirements

3.2.1 By 30 April 2021 one of the remediators ([REDACTED]) must submit a letter or email outlining your compliance with 3.1 General Requirements of the Remediation Order.

3.2.2 By 30 April 2022 one of the remediators ([REDACTED]) must submit a letter or email outlining your ongoing compliance with 3.1 General Requirements of the Remediation Order and every year on the 30 April for the duration of the Order. Send letters or email to northeast@environment.nsw.gov.au or sent by Registered Post to:

Senior Team Leader, Compliance and Regulation

Department of Planning, Industry and Environment

Locked Bag 914, Coffs Harbour NSW 2450

4. AN EXAMPLE OF HOW YOU CAN COMPLY

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

1. Remove all stock from the remediation area by 1 March 2021.
2. If you want to put stock on the property, construct a stock proof fence around the boundary of the remediation area.
3. Controlling weeds by selectively poisoning and manually removing weeds 4 times per year.
4. Prevent human disturbances to the remediation area for the duration of the Order, with the exception of work required for the management of weeds.
5. Send in letter or email outlining your compliance with 3.1 by the 30 April 2021 and every year thereafter.



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DEFINITIONS

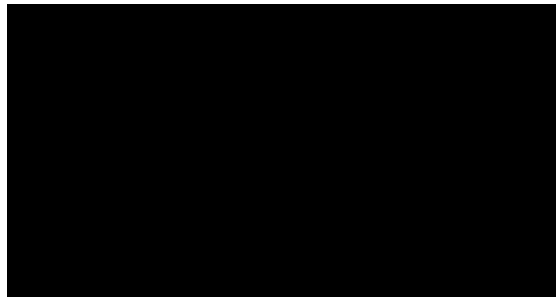
In this Order, the following definitions apply:

Term	Definition
BC Act	Means the <i>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 Planning, Industry and Environment.
LLS Act	Means the <i>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	Means 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] [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.
- DPIE 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.



**Senior Team Leader
Compliance and Regulation, North East
Biodiversity & Conservation Division**

(by Delegation)

Attachment:

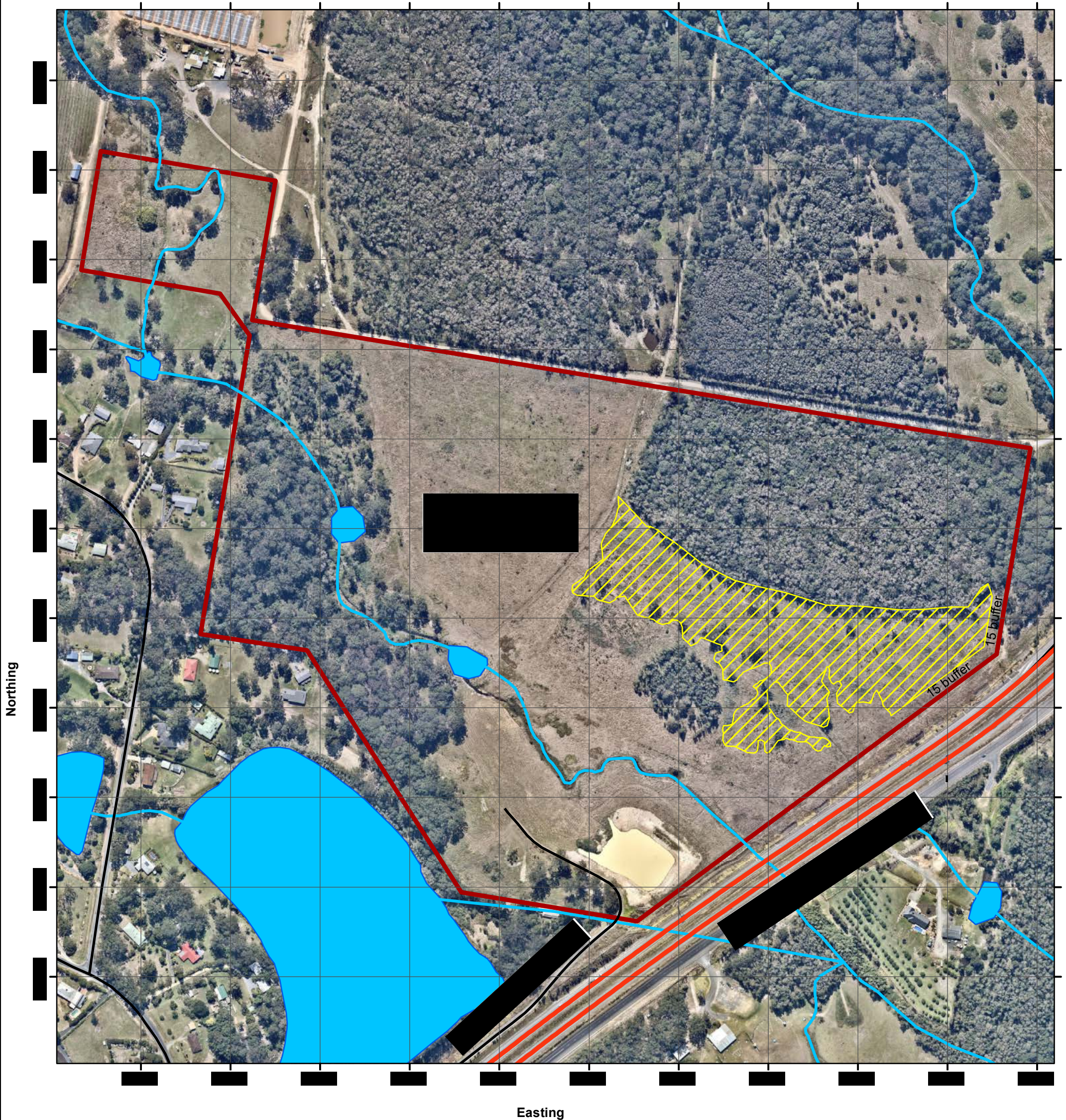
1. Map of the Remediation Area

Attachment 1: Map of the Remediation Area

Biodiversity Conservation Act 2016 s11.15 Remediation Order



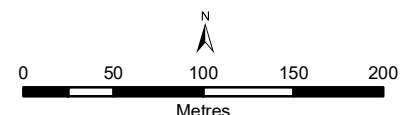
Property Owners: [REDACTED]
 Remediation Order: I17976-2018
 [REDACTED]



Base imagery captured on 04.09.2020 includes material © Nearmap Photomaps.



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

Responsibility lies with the property owner to confirm the accuracy of information supplied by the NSW Land and Property Management Authority.



Map Scale: 1:4,200

Legend

-  Remediation Area
-  The Property

Map Datum/Projection: GDA 94 MGA Zone 56

Date: 5 February 2021

Plan No: S11.15_I17976-2018_V2