

Remediation Order



Planning,
Industry &
Environment

ORDER ISSUED TO:

[REDACTED]
[REDACTED]
[REDACTED]

Order Number: DOC20/1027244

CCMS Case Ref. No.: 201900757

Issue Date: 14 January 2021

Property: [REDACTED]

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

ISSUED VIA: Registered Post and Email - [REDACTED]
[REDACTED]

Date of issue: 14 January 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.

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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 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 rural regulated area on the property between 18 September 2019 and 3 August 2019. The clearing of vegetation on the property has been verified through a desktop assessment of aerial imagery, a site inspection and information obtained by undertaking record of interview of witness.

Under Local Land Services Act 2013, Division 3 Regulation of clearing of native vegetation in regulated rural areas, it is an offence pursuant to section 60N Unauthorised clearing of native vegetation in a regulated rural area.

Information and evidence obtained to date, including, information from site inspections, information from witnesses, assessment of available imagery and conversations indicates that damage occurred on the Property to Category 2 native vegetation damaged between 18 September 2019 and 3 August 2019. Information and evidence obtained to date also indicates that the environmental harm was caused by broadscale clearing of Dry sclerophyll Forests of Northern Open Grassy Blackbutt 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.

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 Land.

The NVR Map Method Statement explains the scientific and analytical method used to develop the NVR Map in accordance with requirements of the Local Lands Service Act (2013) (LLS Act) and the LLS Regulation. (<https://www.environment.nsw.gov.au/resources/bcact/native-vegetation-regulatory-map-method-170495.pdf>)

Land is mapped to each category on the basis of past clearing or disturbance events, as detected by satellite and aerial imagery, and updated land use data. In limited situations, the legislation may specify criteria to override any previous analyses changing the original designation specified by the map method. The method statement does not otherwise assess the type, condition or environmental value of vegetation.

Part 5A of the Local Lands Service Act (2013) (LLS Act) and the LLS Regulation specifies legislative criteria to be applied to make the two sub-categories of Category 2 regulated land (Category 2 – sensitive regulated land and category 2 – vulnerable regulated land). These areas on the map include (but are not limited to) land with significant biodiversity value, land vulnerable to erosion, offset areas or agreement areas.

For more information on the NVR Map see the [About the Native Vegetation Regulatory Map Factsheet](#).

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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, namely, 8.6 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) maintain, remediate or restore the damaged area and 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 twenty-five (25) years from the date of this Order.

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 refer to an attached map.

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 March 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 March 2021.
- 3.1.3 By 1 March 2021 you must abate human disturbances to the Remediation Area.
- 3.1.4 By 1 March 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.

3.2 Reporting Requirements

- 3.2.1 By 1 April 2021 you must submit a letter or email outlining your compliance with 3.1 General Requirements of the Remediation Order.

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- 3.2.2 By 1 April 2022 you must submit a completed Annual Monitoring Report. 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 1 April for the duration of the Order. Send letters or email to rod.ne@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. Construct a stock proof was fence around the boundary of the remediation area by 1 March 2021.
2. Remove all stock from the remediation area by 1 March 2021.
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 completed monitoring report and other reporting by the 1 April and every year thereafter.

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.
Equally	Means to the same extent. Example: if 200 stems of 4 species are required, each species should have 50 stems
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 red and marked "Remediation Area" being parts of [REDACTED].
Remediator	[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> .

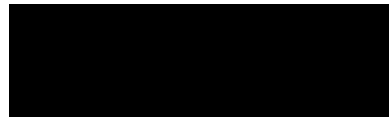
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WARNING AND INFORMATION ABOUT THIS ORDER

- 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

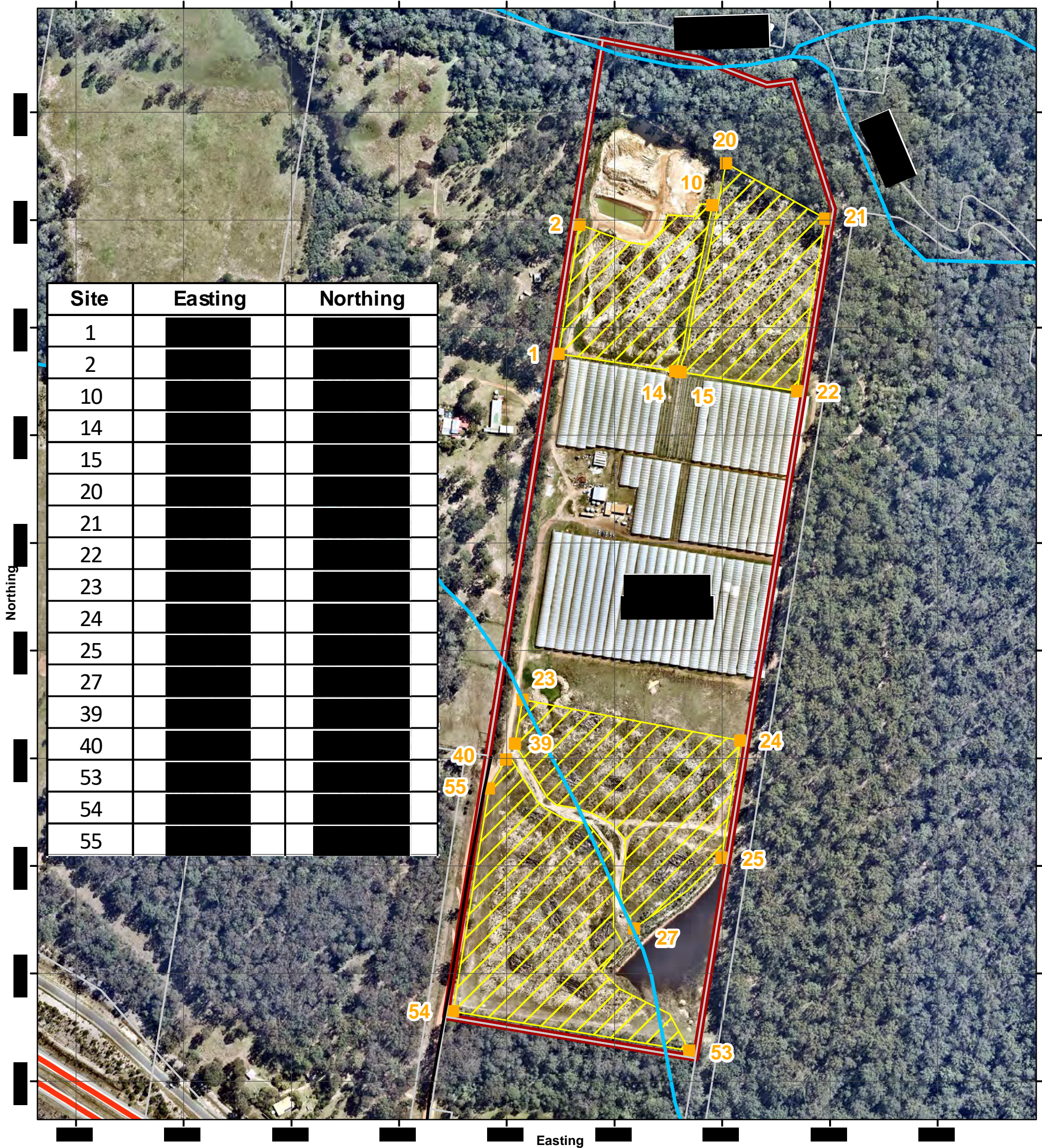
Attachment 1: Map of the Remediation Area

Biodiversity Conservation Act 2016 s11.15 Remediation Order



Property Owners: [Redacted]
 Remediation Order: 201900757
 [Redacted]

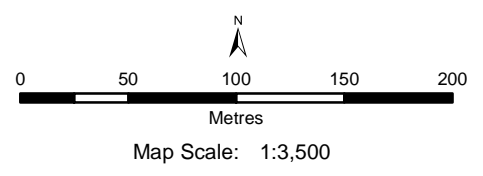
County: [Redacted]
 Parish: [Redacted]
 LGA: [Redacted]



Site	Easting	Northing
1	[Redacted]	[Redacted]
2	[Redacted]	[Redacted]
10	[Redacted]	[Redacted]
14	[Redacted]	[Redacted]
15	[Redacted]	[Redacted]
20	[Redacted]	[Redacted]
21	[Redacted]	[Redacted]
22	[Redacted]	[Redacted]
23	[Redacted]	[Redacted]
24	[Redacted]	[Redacted]
25	[Redacted]	[Redacted]
27	[Redacted]	[Redacted]
39	[Redacted]	[Redacted]
40	[Redacted]	[Redacted]
53	[Redacted]	[Redacted]
54	[Redacted]	[Redacted]
55	[Redacted]	[Redacted]

Legend
 Remediation Area
 The Property

Base imagery captured on the 04.09.2020 includes material © Nearmap.
 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 Datum/Projection: GDA 94 MGA Zone 56
 Date: 11 December 2020
 Plan No: S11.15_201900757_V1