

# Direction to Carry Out Remedial Work



Planning & Environment

## NOTICE ISSUED TO:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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Notice Number: 202102881-1  
Case Reference No.: 202102881  
Issue Date: 28/07/2022

By: Email and Registered Post.

## DIRECTION TO CARRY OUT REMEDIAL WORKS UNDER SECTION 91L OF THE *NATIONAL PARKS AND WILDLIFE ACT 1974*

### BACKGROUND

- A. The Department of Planning and Environment (the **Department**) has responsibility for the administration and enforcement of the *National Parks and Wildlife Act 1974* (**NPW Act**) and associated Regulations.
- B. [REDACTED], holds the position of Senior Team Leader Compliance and Regulation, South West, Biodiversity Conservation Division within the Department.
- C. [REDACTED] holds delegated authority for the purposes of section 91L of the NPW Act.
- D. [REDACTED] is the owner of [REDACTED], at M [REDACTED] [REDACTED], (the **Property**).
- E. The Department has investigated a report of harm to Aboriginal objects located on the Property.
- F. Information gathered to date, including site inspections conducted by Heritage NSW (**HNSW**) archaeologists and Compliance Officers, examination of photographs, Notices to Provide Information and Records, Victorian Aboriginal Council Reports, interviews with witnesses and persons of interest, indicates that harm to Aboriginal objects, namely, [REDACTED] first occurred in the on the Property between 2007 and May 2021. During this period, the harm caused to Aboriginal objects comprised damage to Aboriginal mounds and removal of Aboriginal scar-tree.

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- G. Under section 86 of the NPW Act it is an offence to harm an Aboriginal object. The investigation by the Department concluded that Aboriginal objects on the Property have been harmed in contravention of section 86 of the Act and that none of the available defences and exemptions listed in the Act and associated Regulations in relation to the offence apply.
- H. The works required by this Direction provide for the mitigation and rehabilitation of unlawfully harmed or damaged Aboriginal objects and the restoration of those objects on the Property.

## OPINION

- I. I, [REDACTED], Senior Team Leader Compliance and Regulation, South West, Biodiversity and Conservation Division, of the Department am satisfied that Aboriginal objects have been harmed on the Property as a result of the commission of an offence under section 86 of the Act.

## DIRECTION TO CARRY OUT REMEDIAL WORKS

- J. I, [REDACTED], Senior Team Leader Compliance and Regulation, South West, Biodiversity and Conservation Division, of the Department, in order to:

- a) control, abate or mitigate the harm to Aboriginal objects, and
- b) protect, conserve, maintain, remediate or restore Aboriginal objects,

require that [REDACTED] (the **Remediator**) perform the following remedial works 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 this Direction is issued (the **Term**).

### 1 REMEDIATION AREA

- 1.1 In this Direction, Remediation Area means the areas identified for remediation on the maps at Attachment-1 of this Direction.
- 1.2 The Remediation Areas are located within [REDACTED] of the Property.

### 2 REMEDIATION WORKS

- 2.1 Within four (4) weeks of the issue date of this Direction, the Remediator **must** engage the services of a suitably qualified person that meets the minimum qualifications outlined in section 1.6 of the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW, 2010). The Remediator **must** provide the Department with the suitably qualified persons full name, company name including ABN or ACN (if relevant), and an overview of the individual's qualifications and experience relevant to Aboriginal Cultural Heritage (**ACH**) rehabilitation and protection work or projects. The suitably qualified person **must** be approved in writing by the Department.
- 2.2 Within twelve (12) weeks of the issue date of this Direction, the suitably qualified person approved in writing by the Department is to commence consultation with the local Aboriginal community (**Community**) in accordance with clause 60 of the *National Park and Wildlife Regulation 2019* (and *Aboriginal Cultural Heritage Consultation Requirements for Proponents*, 2010). In consultation with Community, the suitably qualified person approved by the Department is to prepare an Aboriginal Heritage Management Plan (**AHMP**).

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- 2.3 Within thirteen (13) weeks of the issue date of this Direction, the Remediator **must** provide the Department with a copy of an AHMP that has prepared in consultation with Community for review and approval in writing by the Department. The AHMP **must** detail the works proposed to rehabilitate, conserve, and protect Aboriginal objects within the Remediation Areas for the Term of the Direction.
- 2.4 The AHMP is subject to the approval of the Department. The AHMP **must** be approved in writing by the Department before any works can be commenced.
- 2.5 The Department will consult with HNSW and obtain endorsement of the suitably qualified person and the AHMP.

## 3 REQUIREMENTS

- 3.1 The AHMP **must** detail the works proposed to rehabilitate, conserve, and protect Aboriginal objects within the Remediation Areas for the Term of the Direction.
- 3.2 The AHMP **must** include measures to:
- Remove and exclude stock from the Remediation Areas for the Term of the Direction.
  - Install and maintain fencing around the Remediation Areas for the Term of the Direction.
  - Remove and manage weeds, exotic plant species, non-native plants, and commercial crops from within the Remediation Areas for the Term of the Direction. Only selective methods (non-mechanised) of poisoning and/or manual removal are to be used.
  - Remove and exclude pest herbivores species from within the Remediation Areas for the Term of the Direction.
  - Reshape the ground surface in a manner that avoids further harm to Aboriginal objects. Where land forming is required for stability and safety, clean fill material **must** be imported to the site.
  - Revegetate and maintain native vegetation species consistent with the local Plant Community Type (**PCT**) within the Remediation Areas for the Term of the Direction.
  - Signage to identify the Remediation Areas from other areas of the Property for the Term of the Direction.
  - Facilitate reasonable access to representatives of the Wamba Wamba Local Aboriginal Land Council (**LALC**), Wamba Wamba Aboriginal Corporation, and Heritage NSW to participate in and monitor protection works within the Remediation Areas.
- 3.3 The following activities are prohibited within the Remediation Areas for the Term of the Direction unless pre-approved in writing by the Department. **Prohibited Activities** include:
- Soil disturbance including any type of mining or cultivation,
  - Clearing of any native vegetation,
  - Grazing,
  - Removal of fallen timber,
  - Aerial or boom spraying, and
  - Storage of waste or rubbish.
- 3.4 No dams, sheds or other rural infrastructure are to be constructed within the Remediation Areas for the Term of the Direction unless pre-approved in writing by the Department.

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- 3.5 Remediator is responsible for all costs associated with implementing and complying with the conditions of this Direction.
- 3.6 The approved AHMP **must** be implemented by the Remediator for the Term of the Direction and will become Annexure-1 to this Direction.
- 3.7 This Direction and approved AHMP will remain in force for the Term of the Direction unless, amended, revoked, or varied by the Department.
- 3.8 Upon expiration or cessation of the Direction any activities within the Remediation Areas that may cause harm to Aboriginal objects therein would require the issuance of an Aboriginal Heritage Impact Permit (**AHIP**) in accordance with the requirements of the NPW Act and Regulation.
- 3.9 Reasonable access **must** be provided by the Remediator to staff of the Department for the purposes of administering this Direction which includes providing access to inspect the Remediation Areas as required.

## 4 MONITORING AND REPORTING

- 4.1 The Remediator **must** notify the Department when the initial works associated with the AHPM have been completed. The Remediator **must** complete and submit the Initial Works Report (**IWR**) template provided by the Department at Attachment-2 of this Direction. The Remediator **must** submit the IWR to the Team Leader Compliance and Regulation – South West within twelve (12) weeks from the date of approval of the AHPM by the Department.
- 4.2 The Remediator **must** regularly inspect the Remediation Area and in any case at least four (4) times per calendar year for the purposes of determining the conditions of this Direction and requirements of the AHPM are being complied with.
- 4.3 The Remediator will be issued an Annual Monitoring Report each year for the Term of the Direction by the Department which **must** be completed by the Remediator and submitted to the Team Leader Compliance and Regulation, South West Branch within the time specified on the Annual Monitoring Report issued by the Department. An example of the Annual Monitoring Report that will be provided by the Department is provided at Attachment-3 of this Direction.
- 4.4 The Remediator **must** inform any future purchasers of the land subject to this Direction, of this Direction and the associated AHMP.
- 4.5 The Remediator **must** notify the Team Leader Compliance and Regulation - South West within fourteen (14) days if intending to sell the land subject to this Direction.
- 4.6 At any time should the Remediator need clarification or explanation of the requirements and obligations associated with this Direction, the Remediator should contact the Team Leader Compliance and Regulation - South West.
- 4.7 The Department may provide copies of monitoring and/or works reports submitted by the Remediator to Heritage NSW and the Local Aboriginal Land Council (**LALC**) and/or local Aboriginal Corporation.
- 4.8 The Remediator **must** submit all reports and correspondence relating to this Direction to the Team Leader Compliance and Regulation - South West:
  - a) By Registered Post to:

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Team Leader Compliance and Regulation - South West  
NSW Department of Planning and Environment  
PO Box 5336  
Wagga Wagga NSW 2650

or

- b) By courier or by hand to:

Team Leader Compliance and Regulation - South West  
NSW Department of Planning and Environment  
7161 Olympic Highway  
Wagga Wagga NSW 2650

or

- c) By email to: [compliance.southwest@environment.nsw.gov.au](mailto:compliance.southwest@environment.nsw.gov.au)

## 5 RECORD KEEPING

5.1 The following records **must** be kept by the Remediator in respect of any inspections required by this Direction:

- a) The date(s) on which the inspection was undertaken;
- b) The name of the person who undertook the inspection; and
- c) The type of inspection undertaken.

5.2 The following records **must** be kept by the Remediator in respect of any work undertaken as a result of any inspection(s):

- a) Details of any required work within the Remediation Area;
- b) The date(s) this work was undertaken; and
- c) The date on which this work was completed.

5.3 All records required to be kept by this notice **must** be:

- a) In a legible form, or in a form that can readily be reduced to a legible form;
- b) Kept for at least 4 years after the inspection or event to which they relate took place;
- c) Produced to any authorised officer of the Department who asks to see them; and
- d) Be true, accurate and correct.

## WARNING AND INFORMATION ABOUT THIS DIRECTION

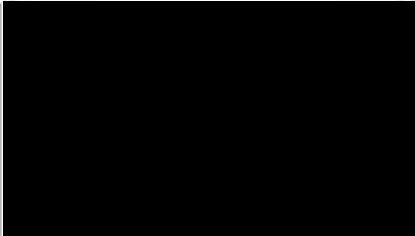

- It is an offence against section 91Q of the Act to fail to comply with this Direction. The maximum penalty that a court may impose for this offence is:
  - for a corporation, \$220,000 plus \$22,000 for each day the offence continues and
  - for an individual, \$110,000 plus \$11,000 for each day the offence continues.
- If you fail to comply with this Direction the Secretary of the Department of Planning and Environment may direct any other person to carry out the works and may then recover the cost from you (section 91O of the Act).

# Direction to Carry Out Remedial Work

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- This Direction is issued under section 91L of the Act.
- Under section 91L(3) of the Act this Direction may be varied or revoked by a further written notice.
- Under section 91T(1) of the Act, if you are aggrieved by the decision to make this Direction you may appeal to the Land and Environment Court within 30 days of this Direction being served on you. However, even if an appeal is lodged, you must comply with this Direction, unless the Court orders otherwise (section 91T(2)).
- Under section 188E of the Act, your obligation to comply with the requirements of this Direction continues until the Direction is complied with, even if the due date for compliance is passed.
- Department of Planning and Environment officers who have been appointed as authorised officers under the NPW Act may conduct inspections to determine whether this Direction is being complied with.
- Words and expressions have the same meaning as words and expressions used in the Act, except where a word is specifically defined in this Direction.
- A Remediation Direction will not negate the potential for prosecution. A Remediation Direction is separate to any potential prosecution.

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Senior Team Leader Compliance and Regulation  
Biodiversity and Conservation Division – South West  
NSW Department of Planning and Environment  
(by Delegation)

## Attachments:

1. Remediation Area Maps (1A/Map-1, 1B/Map-2 & 1C/Map-3)
2. Initial Work Report (Template)
3. Annual Monitoring Report (Example)


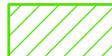

## Annexures:

1. Department approved Aboriginal Heritage Management Plan





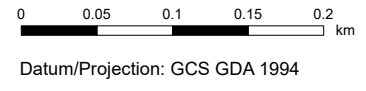
# Legend

-  Aboriginal Objects
-  Remediation Areas
-  Boundary

## Attachment-1A | Remediation Area Map-1 Remediation Direction 202102881-1

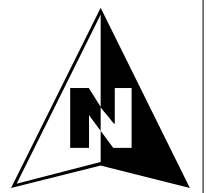
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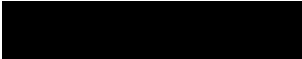
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Author: [Redacted]  
Date: 27/07/2022  
Imagery: Planet May 2022







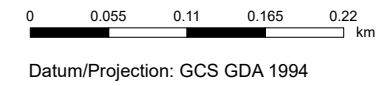
## Legend


-  Aboriginal Objects (AHIMS Ref)
-  Remediation Areas
-  Boundary 

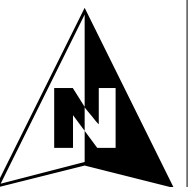
## Attachment-1B | Remediation Area Map-2 Remediation Direction 202102881-1



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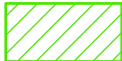

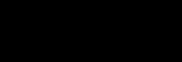
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 Date: 27/07/2022  
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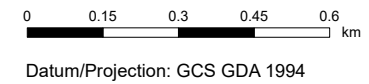
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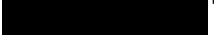
-  Aboriginal Objects
-  Remediation Areas
-  Boundary 

## Attachment-1C | Remediation Area Map-3 Remediation Direction 202102881-1



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Author:   
Date: 27/07/2022  
Imagery: Planet May 2022

