



Reference Number: DOC14/290857

File number: EF14/21258

Date: 10 December 2014

NOTICE OF VARIATION OF DIRECTION TO CARRY OUT REMEDIAL WORK

BACKGROUND

- A. The Office of Environment and Heritage (OEH) within the Department of Planning and Environment has responsibility for the administration and enforcement of the *National Parks and Wildlife Act 1974* (the Act) and associated Regulations.
- B. Don Arnold holds the position of Senior Manager North East Region, Regional Operations Group, within OEH.
- C. Don Arnold holds delegated authority on behalf of the Chief Executive of OEH for the purposes of section 91K of the Act.
- D. Under section 91K(3) of the Act the Director-General of DPC of OEH may vary a direction to carry out remedial works issued under section 91K of the Act.
- E. [REDACTED] is the leaseholder of the land (the Leaseholder), which was formerly identified as Lot 2 of Deposited Plan number 1151473 (the land).
- F. The Current Leaseholder was issued with a direction to carry out remedial work (the Direction) on 8 June 2011 for vegetation clearing which resulted in damage to the habitat of the *Placostylus bivaricosus* (Lord Howe Island Placostylus) and the *Puffinus carneipes* (Flesh-footed Shearwater) by removing the preferred habitat conditions of these species.
- G. The Lord Howe Island Placostylus is listed as an endangered species in Part 1 of Schedule 1 of the *Threatened Species Conservation Act 1995* (TSC Act).
- H. The Flesh-footed Shearwater is listed as a vulnerable species in Part 1 of Schedule 2 of the TSC Act.
- I. On 27 November 2014 OEH received correspondence from the Lord Howe Island Board (LHIB) advising that it had approved a development application (DA2014-08) for

subdivision of the land. The correspondence advised that the area subject to the Direction is now located entirely on Lot 11 DP1202580.

- J. In an email to OEH dated 28 November 2014 the LHIB advised that the development consent it issued requires the creation of a right of way over the new allotment to enable [REDACTED] access the remediation area

NOTICE OF VARIATION OF DIRECTION FOR REMEDIAL WORK

- K. I, Don Arnold, Senior Manager North East Region, vary the direction to carry out remedial work made under section 91K of the Act, dated 8 June 2011 and applying to the land as follows:

- 1) The land to which the Direction applies is Lot 11 DP1202580, as identified in Attachment 1 of this variation to the Direction.

OPERATION OF NOTICE

- L. This notice of variation takes effect from the date of this notice variation

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 DPC may authorise any other person to carry out the works and may then recover the cost from you (section 91O of the Act).
- This Direction is issued under section 91K of the Act.
- Under section 91K(3) of the Act this Direction may be varied or revoked by a further 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.
- 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.
- DPC 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.
- For the purposes of this Direction, "national parks legislation" means the Act and the regulations under the Act.

- A Remediation Direction will not negate the potential for prosecution. A Remediation Direction is separate to any potential prosecution.



DON ARNOLD

Senior Manager North East Region

Regional Operations

(by Delegation)

Attachments:

1. Plan of subdivision of Lot 2 DP1151473