

Direction to Carry Out Remedial Work



Office of Environment & Heritage

NOTICE ISSUED TO:

[REDACTED]

Notice Number: DOC19/187584-9
Case Reference Number: I00291-2019
Date: 10 May 2019

BY Registered Post and email

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

BACKGROUND

- A. The Office of Environment and Heritage (**OEH**) 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 Director North East, Conservation and Regional Delivery Division within OEH.
- C. The Director North East, Conservation and Regional Delivery Division within OEH holds delegated authority for the purposes of section 91L of the NPW Act.
- D. [REDACTED] are the owners of L [REDACTED] [REDACTED] (the **Property**) and [REDACTED] [REDACTED] (the **Property**).
- E. OEH has investigated a report of harm to Aboriginal objects on the Property.
- F. Information gathered to date, including site inspections by OEH on 11 January 2019 and 1 February 2019, indicates that harm to Aboriginal objects, namely, a midden site with human remains # [REDACTED] first occurred in the Remediation Area on the Property after 18 October 2017 and prior to 11 January 2019. During this period, harm was caused to the midden which has been disturbed by an excavation machine.
- G. Under the NPW Act it is an offence to harm an Aboriginal object (section 86). The investigation by OEH concluded that Aboriginal objects on the Property have been harmed in contravention of section 86 of the NPW Act and that none of the available defences and exemptions listed in the NPW 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 on the Property.

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OPINION

- I, [REDACTED], holds the position of Director North East, Conservation and Regional Delivery Division within OEH, 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.

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- J. I, [REDACTED], Director North East, Conservation and Regional Delivery Division, OEH, in order to:
- a) control, abate or mitigate the harm to the midden with burial remains, and
 - b) protect, conserve, maintain, remediate or restore the midden with burial remains,
- require that [REDACTED] (the Remediator) perform the following remedial works on the Property within the time specified.

REMEDIATION WORKS

- 1 In this Direction the Remediation Area is [REDACTED] as shown on ATTACHMENT 1 – MAP OF REMEDIATION AREA.
- 2 **Works Implementation**
 - 2.1 The Remediator must ensure that a temporary fence is erected that will prevent access to persons to the Remediation Area from [REDACTED].
 - 2.2 The fence must be erected and stabilised in a way that will not require any excavations on the Remediation Area.
 - 2.3 Any gates in the fence referred to in condition 2.1 must be kept locked, except at times of authorised site access, to prevent unauthorised access.
 - 2.4 Access to the Remediation Area is to remain under the control of the Remediator.
 - 2.5 The fence is not to be erected without the consent of Kempsey Shire Council (where that consent is required).

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- 2.6 The Remediator must install a sign on the exterior of the fence referred to in condition 2.1 on the south eastern side of the fence and face toward [REDACTED] Street and be constructed as follows:
- 450mm by 300mm in size
 - Constructed of Aluminium
 - In a position that is visible from [REDACTED]
 - Contain the words:

**This is a remediation area maintained
in accordance with a Remediation Direction
issued under section 91L of the National
Parks and Wildlife Act 1974.**

**DO NOT ENTER SITE
For any site access questions please call (the current number of one of the
Remediators must be displayed here)**

3 Time frame for Works

- 3.1 All works associated with conditions 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 of this Remediation Direction must be completed within 14 days of the issue of this Remediation Direction.
- 3.2 All aspects of fencing and signage associated with conditions 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 of this Remediation Direction must be maintained by the Remediator until the earlier of the following:
- As directed otherwise by OEH.
 - This Remediation Direction is varied or revoked.
 - An Aboriginal Heritage Impact Permit is granted under section 90 of the *National Parks and Wildlife Act 1974* (NPW Act) in relation to Aboriginal Heritage Information System record # [REDACTED] for the Property.
 - 3 years, but this period of time may be reviewed after 6 months of this Direction, on application by the Remediator to the Director of North East, Conservation and Regional Delivery Division with OEH (or other agency).

4 REPORTING

- 4.1 [REDACTED] must prepare and submit an Initial Works Report:

4.1.1 By Registered Post to:

Senior Team Leader Compliance and Regulation
Regional Operations Division, North East
Office of Environment and Heritage
Locked Bag 914
Coffs Harbour NSW 2450

or

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4.1.2 By courier or by hand to:

Senior Team Leader Compliance and Regulation
Regional Operations Division, North East
Office of Environment and Heritage
Level 8, 24 Moonee Street
Coffs Harbour NSW 2450

by no later than 21 days from the issue of this Remediation Direction

4.2 The Initial Works Report must include but not be limited to:

Photos and documentation that demonstrates that conditions 2.1, 2.2, 2.3, 2.4, 2.5, 2.6 and 3.1 of this Remedial Direction have been complied with.

4.3 The Remediator is to notify OEH of the sale or transfer of the Property to another person or entity, in the same manner as set out in either paragraph 4.1.1 or 4.1.2 of this Remediation Direction within 7 days of the sale or transfer. Note: This is for the purpose of allowing OEH to consider whether it would be appropriate in the circumstances to make a further Remediation Direction under section 91L of the NPW Act on the new landholder (in accordance with Section 91M of the NPW Act), following appropriate consultation with the new landholder.

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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 Chief Executive of OEH may direct 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 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.
- OEH 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.

[Redacted signature]

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[Redacted name]

Director North East

Conservation and Regional Delivery Division

(by Delegation)

Attachments:

1. Map of Remediation Area

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ATTACHMENT 1 – MAP OF REMEDIATION AREA

