



██████████  
General Manager  
Eurobodalla Shire Council  
PO Box 99 Moruya 2537

Dear ██████████,

**Subject: REMEDIATION DIRECTION - NATIONAL PARKS AND WILDLIFE ACT 1974**

I refer to previous correspondence concerning the disturbance of Aboriginal site recorded as '62-7-0171 Wagonga Inlet Brices Bay' undertaken by works carried out by employees of ESC.

We considered your comments on the draft remediation direction issued 10 May 2021 and have reviewed the required outcome.

Accordingly, please find enclosed a remediation order issued under section 91L of the National Parks and Wildlife Act 1974 (NPWS Act) requiring you to carry out remediation work within a specified time.

Please contact me on ██████████ or via email at ██████████@environment.nsw.gov.au if you have any questions.

Yours sincerely,

██████████

██████████  
**South East Compliance & Regulation  
Biodiversity and Conservation Division**

# Direction to Carry Out Remedial Work



Planning,  
Industry &  
Environment

## NOTICE ISSUED TO:

The General Manager Eurobodalla Shire Council  
Administration Centre  
Vulcan Street Moruya  
PO Box 99, NSW Moruya 2537

Notice Number: 202001981-3  
CCMS Case Ref. No.: 202001981  
Reference: DOC21/871435  
Issue Date: 13 October 2021

**BY EMAIL:** council@esc.nsw.gov.au

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

### BACKGROUND

- A. The Department of Planning, Industry and Environment (**DPIE**) has responsibility for the administration and enforcement of the *National Parks and Wildlife Act 1974* (**NPW Act**) and associated Regulations.
- B. ██████████ holds the position of A/Senior Team Leader Compliance and Regulation within DPIE.
- C. ██████████ holds delegated authority for the purposes of section 91L of the NPW Act.
- D. Adjacent to Lot 7012 of DP 1056264 Wagonga Scenic Drive, Narooma, NSW 2546. 'Wagonga Inlet, Brices Bay', (the **Property**).
- E. DPIE has investigated a report of harm to Aboriginal object 62-7-0171 'Wagonga Inlet Brices Bay' on the Property.
- F. Information gathered to date, including site inspection data and archaeological report prepared by ██████████ (Archaeologist, Heritage NSW, Department of Premier and Cabinet) indicates that harm to an Aboriginal object, at site 62-7-0171 'Wagonga Inlet Brices Bay', first occurred on the Property commencing July 2020 and was undertaken until September 2020. During this period, the harm caused to Aboriginal object 62-7-0171 'Wagonga Inlet Brices Bay' comprised of ground disturbing activities including excavation to install a storm water drain.
- G. Under the NPW Act it is an offence to harm an Aboriginal object (section 86(2)). The investigation by DPIE concluded that Aboriginal object(s) on the Property has been harmed in contravention of section 86(2) 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 object(s) and the restoration of that object(s) on the Property.

### OPINION

- I. I, ██████████, Senior Team Leader Compliance and Regulation of DPIE am satisfied that Aboriginal object 62-7-0171 'Wagonga Inlet Brices Bay' has been harmed on the Property as a result of the commission of an offence under section 86(2) of the Act.

# Direction to Carry Out Remedial Work

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## DIRECTION TO CARRY OUT REMEDIAL WORKS

- J. I, [REDACTED], A/Senior Team Leader Compliance and Regulation, of DPIE, in order to:
- a) control, abate or mitigate the harm to 62-7-0171 'Wagonga Inlet Brices Bay', and
  - b) protect, conserve, maintain, remediate or restore 62-7-0171 'Wagonga Inlet Brices Bay',

require that Eurobodalla Shire Council 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 15 years from the date of this Direction .

Eurobodalla Shire Council must:

1. Within 3 months of the commencement of this direction, engage a suitably qualified archaeologist. This suitably qualified archaeologist must meet the minimum qualifications outlined in s1.6 of the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW, 2010) and be approved by DPIE.
2. Within 14 days of engaging a suitably qualified archaeologist, commence Aboriginal consultation as set out in clause 60 of the *National Parks and Wildlife Regulation 2019* (and *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*).
3. Prior to carrying out any remediation activities, prepare an Aboriginal Heritage Management Plan (AHMP) for the remediation to the satisfaction of DPIE in accordance with the Heritage Management Plan Requirements outlined in Appendix 1.
4. Develop an Aboriginal Heritage Management Plan (AHMP) that:
  - I. Revises the full extent, nature, and significance of Aboriginal object 62-7-0171 'Wagonga Inlet Brices Bay' through archaeological surveys and test excavations. The Remediation Area is defined in Appendix 2.
  - II. Identifies any cultural values associated with the Remediation footprint through Aboriginal consultation.
  - III. Identifies any restoration and/or conservation works that the Registered Aboriginal Parties would like to see implemented.
  - IV. Identifies whether any current or future activities occurring at or in the vicinity of Aboriginal object 62-7-0171 'Wagonga Inlet Brices Bay' are causing, or will cause, any direct or indirect harm to Aboriginal objects.
  - V. Considers whether the runoff from the storm water drain will have any further direct or indirect harm on Aboriginal object 62-7-0171 'Wagonga Inlet Brices Bay' and includes specialised hydrology input.
  - VI. Identifies areas for protection, conservation, maintenance, remediation and/or restoration of the site.
  - VII. Provides recommendations for the long-term protection, conservation, maintenance, remediation and/or restoration of the site.
  - VIII. Identify any statutory approvals required including Aboriginal Heritage Impact Permit (AHIP) under the NPW Act.

## REMEDIATION WORKS

# Direction to Carry Out Remedial Work

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- 1 Following DPIEs approval of the AHMP, Eurobodalla Shire Council shall carry out the remediation in accordance with the AHMP.
- 2 The identified Remediation Footprint in the AHMP for the purposes of this direction is to become to the remediation area on the successful approval of the AHMP.
- 3 Prior to carrying out any remediation activities, ensure all remediation works are undertaken in accordance with the NPW Act.

## RECORDS

1. The following records must be kept by Eurobodalla Shire Council 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.
2. The following records must be kept by Eurobodalla Shire Council in respect of any work undertaken as a result of any inspection(s):
  - a) A log of Aboriginal consultation
  - b) Details of any heritage inductions
  - c) Details of any required work within the Remediation Area;
  - d) The date(s) this work was undertaken; and
  - e) The date on which this work was completed.
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 in a legible form to any authorised officer of DPIE 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 NPW 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, Industry 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).
- 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.

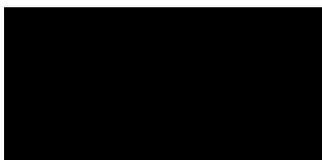
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- Under section 91T(1) of the Act, if you are aggrieved by the decision to make this Direction you may appeal to the Land and Environment Court within 30 days of this Direction being served on you. However, even if an appeal is lodged, you must comply 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, Industry 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**  
(by Delegation)

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## Appendix 1:

### Aboriginal Heritage Management Plan Requirements.

The Aboriginal Heritage Management Plan must:

- A. Be prepared by a suitably qualified and experienced person whose appointment has been endorsed by DPIE
- B. Be prepared in consultation with the DPIE and Registered Aboriginal Parties;
- C. Include up to date baseline mapping of the Aboriginal cultural heritage objects and values within and adjoining the remediation footprint;
- D. Include maps showing the remediation footprint and known Aboriginal Heritage Information Management System (AHIMS) sites in relation to the landforms and soil landscapes;
- E. Include an Archaeological Survey Program with provisions for:
  - I. Survey of all areas of proposed ground disturbance undertaken in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW, 2010), or its latest version.
  - II. Involvement in the survey program by representatives of the Registered Aboriginal Parties.
  - III. Reporting of survey results prepared in accordance with the *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW* (DECCW, 2010) and the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW, 2010), or its latest version and submitted to DPIE for approval prior to the commencement of test excavations.
- F. Include an Archaeological Test Excavation Program with provisions for:
  - I. A test excavation methodology prepared in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW, 2010), or its latest version and submitted to DPIE for endorsement prior to commencement of test excavations.
  - II. Test excavations of both known Aboriginal objects and any areas of potential archaeological deposit (PAD) within the remediation footprint.
  - III. Assessment of the archaeological and cultural heritage significance of all Aboriginal objects identified during the test excavations, including consideration of ongoing and cumulative impacts.
  - IV. Involvement in the test excavations by representatives of the Registered Aboriginal Parties.
  - V. Reporting of results in accordance with the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW, 2010), or its latest version and submitted to DPIE for endorsement prior to commencement of any salvage excavations (if required).
  - VI. Details on the long-term management of Aboriginal objects
- G. On the basis of the Archaeological Survey Program and Archaeological Test Excavation Program, define the extent of Aboriginal object 62-7-0171 'Wagonga Inlet Brices Bay'.
- H. Include an Archaeological Salvage Program for Aboriginal objects within the remediation footprint (including those identified following the additional survey and test excavation programs above), including methodology and procedures/protocols for:
  - I. Salvage, excavation and/or management of sites within the remediation footprint;

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- II. Site assessment and reporting;
  - III. Research objectives to inform knowledge of Aboriginal occupation;
  - IV. Temporary protection, storage and management of salvaged Aboriginal objects;
  - V. Addressing relevant statutory requirements under the NPW Act; and
  - VI. Long term management of salvaged Aboriginal objects;
  - VII. Reporting on salvage excavation results prepared in accordance with the *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (DECCW, 2010)* and the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales (DECCW, 2010)*, or its latest version and submitted to DPIE for endorsement prior to commencement of any future development.
- I. Trigger Action Response Plans (including stop work provisions, notification protocols and significance assessment protocols) for managing key risks to Aboriginal cultural heritage values, including:
- I. The discovery of any potential human remains;
  - II. The discovery of previously unidentified Aboriginal objects within the remediation footprint; and
  - III. Managing unauthorised ground disturbance.;
- J. A Cultural Heritage Management Program, including a description of the measures that would be implemented for:
- I. Protecting, monitoring and managing Aboriginal cultural heritage values and objects outside the remediation footprint;
  - II. Maintaining and managing reasonable access for Registered Aboriginal Parties to Aboriginal objects on site;
  - III. Ongoing consultation with Registered Aboriginal Parties in the conservation and management of Aboriginal cultural heritage on-site;
  - IV. Ensuring any workers on site receive suitable heritage inductions prior to carrying out any activities which may disturb Aboriginal objects, and that suitable records are kept of these inductions; and
  - V. The long-term management of the Aboriginal cultural heritage values of the site.
  - VI. Consultation timeframes for the Cultural Heritage Management Program are a minimum of 28 days.

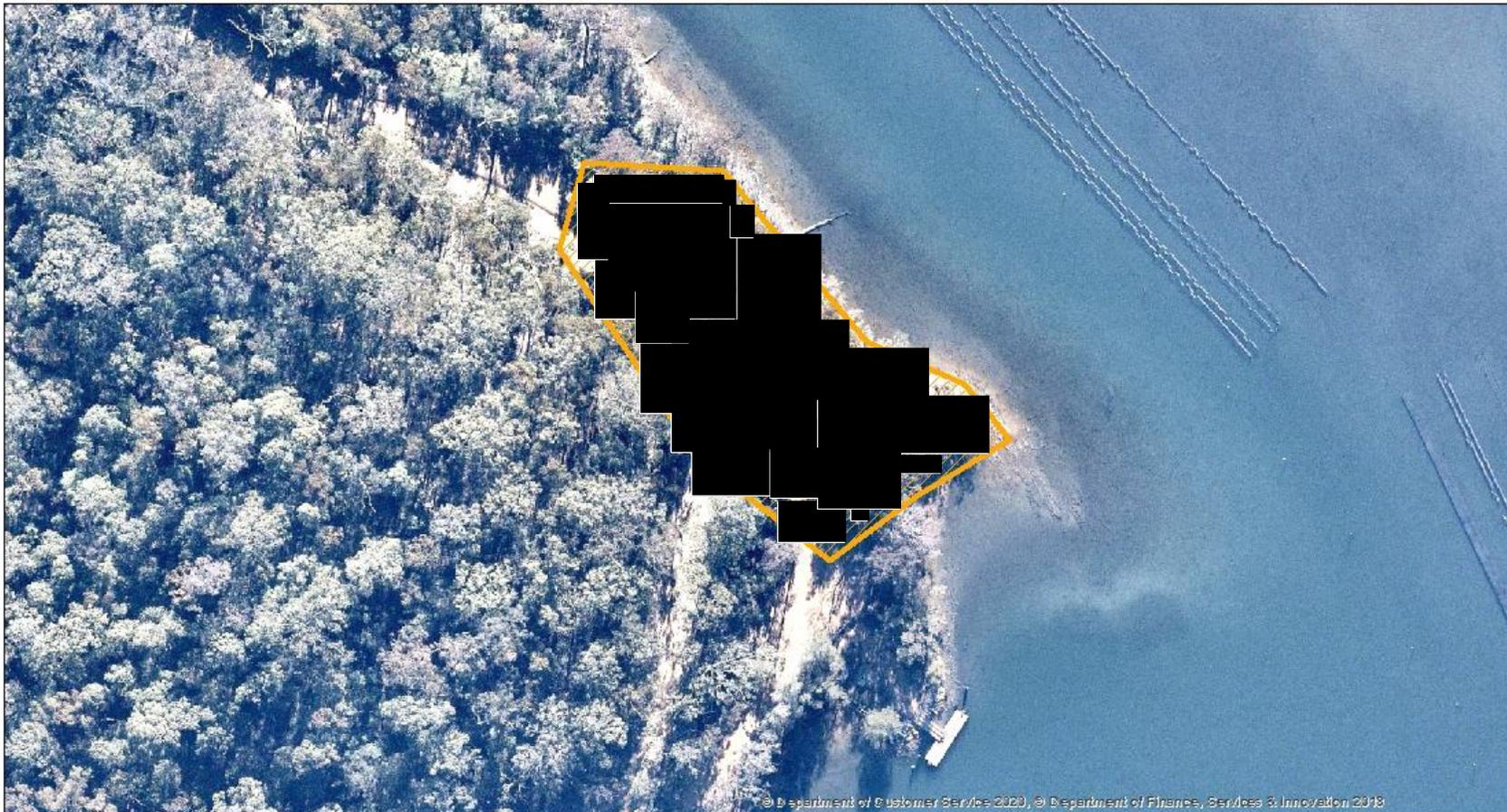
Following approval, Eurobodalla Shire Council shall carry out the remediation in accordance with this plan.

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## Appendix 2:



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### Legend

-  Remediation Area
-  AHIMS Recorded: Aboriginal object 62-7-0171



### Wagonga Scenic Drive Brices Bay, Wagonga Inlet

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