

Direction to Carry Out Remedial Work



NOTICE ISSUED TO:

██████████
General Manager
Wollongong City Council
41 Burelli Street
Wollongong NSW Australia

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CCMS Case Ref. No.: EF21/18075
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By Email: council@wollongong.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 and Environment 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 Senior Team Leader Compliance and Regulation within the Department of Planning and Environment.
- C. ██████████ holds delegated authority for the purposes of section 91L of the NPW Act.
- D. Adjacent to ██████████ (the **Property**).
- E. The Department of Planning and Environment has investigated a report of harm to Aboriginal objects on the Property.
- F. Information gathered to date, including site inspection and response to s193 notice to provide information indicates that harm to an Aboriginal object, at site ██████████ first occurred on the Property commencing November 2021. The harm caused to Aboriginal object ██████████ comprised of ground disturbing activities including excavating for footpath installation and replacement work.
- G. Under the NPW Act it is an offence to harm an Aboriginal object (section 86 (2)). The investigation by the Department of Planning and Environment concluded that an Aboriginal objects on the Property has been harmed in contravention of section 86 (2) 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 object/s and the restoration of those objects on the Property.

OPINION

- I. I, ██████████, Senior Team Leader Compliance and Regulation, of the Department of Planning and Environment am satisfied that Aboriginal object/s 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



DIRECTION TO CARRY OUT REMEDIAL WORKS

J. I, [REDACTED], Senior Team Leader Compliance and Regulation, of the Department of Planning and Environment, in order to:

- a) control, abate or mitigate the harm to [REDACTED], and
- b) protect, conserve, maintain, remediate or restore [REDACTED],

require that Wollongong City 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.

REMEDIATION WORKS

Wollongong City Council must:

- 1 Complete the following Remediation works within site [REDACTED].
- 2 Within 48hours of this order being issued, install geofabric (or similar porous material) over the exposed cutting.
- 3 This material needs to be secured by weights such as small sandbags (no ground penetrating material).
- 4 The secured weights are not be placed directly over the exposed shell.
- 5 The temporary fencing currently in place always needs to be maintained and secured.
- 6 The site needs to be monitored weekly (or particularly after heavy rain) to ensure the geofabric (or similar porous material) is still covering the exposed cutting.
- 7 Seek advice immediately from Department Planning and Environment if additional erosion controls are required.
- 8 Arrange for a representative of the Aboriginal community to monitor the installation of the geofabric (or similar porous material).
- 9 No further harm is to occur at the site unless Wollongong City Council has been issued with an Aboriginal Heritage Impact Permit (AHIP).
- 10 The temporary fencing and geofabric (or similar porous material) is to remain installed at the site until the Department of Planning and Environment provides written advice it can be removed or Wollongong City Council has been issued with an AHIP for the site.

3 RECORDS

- 3.1 The following records must be kept by Wollongong City Council in respect of any monitoring 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

Direction to Carry Out Remedial Work



- c) The type of monitoring undertaken.
- 3.1 The following records must be kept by Wollongong City Council 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.
- 3.2 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 the Department of Planning and Environment who asks to see them; and
 - d) Be true, accurate and correct.

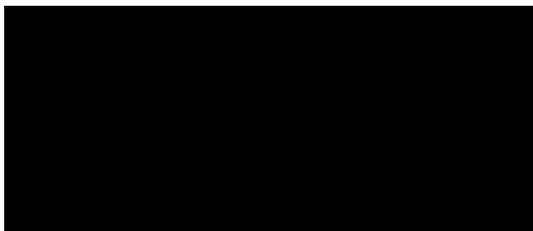
WARNING AND INFORMATION ABOUT THIS DIRECTION

- 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).
- 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.

Direction to Carry Out Remedial Work



Planning,
Industry &
Environment



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[Redacted] Senior Team Leader
Compliance and Regulation South East Region
Biodiversity and Conservation
(by Delegation)