

Remediation Order



Planning,
Industry &
Environment

ORDER ISSUED TO:

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

Notice Number: 08214-2018-1
Case Reference Number: 08214-2018
Date: 06/01/2020

By: Registered Post

ORDER TO CARRY OUT REMEDIATION WORK UNDER SECTION 11.15 OF THE *BIODIVERSITY CONSERVATION ACT 2016 (NSW)*

BACKGROUND

- A. The NSW Department of Planning, Industry and Environment (**the Department**) has responsibility for the enforcement of the *Local Land Services Act 2017 (LLS Act)* and now repealed *Native Vegetation Act 2003 (NV Act)*.
- B. The NV Act was repealed on 25 August 2017. However, pursuant to clause 58 of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017 (BC (S&T) Regulation)*, the repeal of the NV Act does not affect any offence against that Act, or the regulations under that Act, that was committed before the repeal, and the provisions of the NV Act relating to proceedings for an offence, issuing of penalty notices for an offence, and the making of a court order in relation to an offence continue to apply.
- C. Pursuant to clause 54 of the BC (S&T) Regulation, Remediation Orders under Division 4 of Part 11 of the BC Act may be issued in relation to damage in or as a result of the commission of an offence under the NV Act committed before 25 August 2017.
- D. Pursuant to section 11.15 of the BC Act, if the Chief Executive of the Department is satisfied that damage has occurred in or as a result of the commission of an offence against the NV Act or LLS Act, the Chief Executive may order a person to carry out specified remediation work in a specified manner and within a specified time.
- E. Graeme ENDERS holds the position of Director South West Branch, Biodiversity and Conservation Division within the Department.
- F. Graeme ENDERS holds delegated authority on behalf of the Chief Executive of the Department for the purposes of section 11.15 of the BC Act.
- G. [REDACTED] and [REDACTED] are the joint owners of [REDACTED], which forms part of the landholding [REDACTED] at [REDACTED]

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[REDACTED] (the Property). [REDACTED] is the parcel of land where the unauthorised/unlawful clearing occurred.

H. [REDACTED] and [REDACTED] are the joint owners of [REDACTED] which forms part of the landholding [REDACTED] at [REDACTED]. [REDACTED] is the parcel of land where the Remediation Area is located.

BASIS FOR ISSUING REMEDIATION ORDER

- I. The Department has investigated an allegation relating to the unauthorised/unlawful clearing of native vegetation on the Property between 11/12/2015 and 28/01/2017, and 31/08/2017 and 23/04/2018.
- J. Under clause 58 of the BC S&T Regulation 2017, it was an offence to clear native vegetation contrary to section 12 of the NV Act.
- K. Under section 60N of the Local Land Services Act 2013, it is an offence to clear native vegetation in a regulated rural area.
- L. Information and evidence obtained to date indicates that the clearing of 6.5ha of native vegetation occurred on the Property to between 11/12/2015 and 23/04/2018 contrary to section 12 of the NV Act and contrary to section 60N of the LLS Act, and that none of the available defences listed in the NV Act or LLS Act and associated Regulations in relation to the offences apply.
- M. On the 04/03/2019 the [REDACTED] and [REDACTED] were each issued penalty notices for clearing native vegetation contrary to section 12 of the NV Act.
- N. The works required by this Order provide for the mitigation of damage sustained to the Property by clearing native vegetation contrary to section 12 of the NV Act.

OPINION

- O. I, Graeme ENDERS, Director South West Branch, Biodiversity and Conservation Division, am satisfied that native vegetation has been damaged in or as a result of the commission of an offence against s12 of the NV Act and s60N of the LLS Act.

ORDER TO CARRY OUT REMEDIATION WORK

- P. In order to mitigate the damage to the area concerned.

I, Graeme ENDERS, Director South West Branch, Biodiversity and Conservation Division, order [REDACTED] and [REDACTED] (the Remediator) to carry out the following remediation work 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 of this Order:

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1 REMEDIATION AREA

- 1.1 In this Order, Remediation Area means the area identified as the Remediation Area on the attached map titled Attachment-1 Remediation Area Map-1 and Attachment-2 Remediation Area Map-2 which includes reference coordinates for the Remediation Area.
- 1.2 The Remediation Area is an alternate site to the area cleared however is located within the landholding [REDACTED] owned and controlled by the Remediator. The Remediation Area is located within [REDACTED] and is 13ha of remnant native vegetation neighbouring the [REDACTED].

2 EXCLUSION OF REMEDIATION AREA

Fencing

- 2.1 The Remediator is not required to construct a fence around the perimeter of the Remediation Area, however is required by **29 February 2020** to install clearly identifiable coloured marker posts along the perimeter of the Remediation Area at the locations identified in Attachment-2 for the purposes of clearly identifying the Remediation Area.
- 2.2 The Remediator must inspect the coloured marker posts around the perimeter of the Remediation Area to ensure the coloured markers are in good condition, clearly visible and compliant with the requirements of condition 2.1 at least once every twelve (12) month Reporting Period.
- 2.3 The Remediator is permitted to clear and maintain a fence-line buffer no greater than fifteen (15) metres in width from the fence-line of the southern boundary of the Remediation Area as indicated in Attachment-2. Any other clearing within the Remediation Area must be approved in writing by the Department prior to the clearing being carried out.

3 WEED, EXOTIC SPECIES, COMMERCIAL CROP AND NON-NATIVE PLANT MANAGEMENT

- 3.1 Any exotic species, commercial crops or non-native plant species found within the Remediation Area after **29 February 2020** must be removed by the Remediator as soon as practicable and in any event within fourteen (14) days of becoming so aware.
- 3.2 If any exotic species, commercial crops or non-native plant species are identified in the Remediation Area the Remediator must destroy all such exotic species, commercial crops or non-native plant species by either spot application of herbicide or by removal by non-mechanised means.
- 3.3 The Remediator must inspect the Remediation Area for to exotic species, commercial crops or non-native plant species at least once every Reporting Period.

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4 NOTIFIABLE INCIDENTS, EVENTS, OR ACTIVITIES

- 4.1 The Remediator is required to notify the Department by contacting the Team Leader Compliance & Regulation, South West Branch (by phone or email) of any incident, event, or activity that may adversely impact or affect the health of native vegetation and/or native animal species within the Remediation Area. This may include:
- a) fire;
 - b) flood;
 - c) storm; or
 - d) any other incident, event, or activity that may adversely impact or affect the health of native vegetation and/or native animal species within the Remediation Area.
- 4.2 Notification is to be made by the Remediator as soon as practicable and in any event within fourteen (14) days of becoming so aware of any incident, event, or activity that may adversely impact or affect the health of native vegetation and/or native animal species within the Remediation Area.

5 RECORDS

- 5.1 The following records must be kept by the Remediator in respect of any inspections conducted by the Remediator or nominated representative:
- 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;
 - c) the date on which this work was completed; and
 - d) the name of the person who performed the work undertaken.
- 5.3 All records required to be kept by this Order must be:
- a) true, accurate and correct;
 - b) in a legible form, or in a form that can readily be reduced to a legible form;
 - c) kept for at least four (4) years after the inspection or event to which they relate took place; and
 - d) produced in a legible form to any Authorised Officer of the Department who asks to see them.

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6 REPORTING

6.1 The Remediator must prepare and submit an Initial Works Report by the **14 March 2020**:

a) By Registered Post to:

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

or

b) By courier or by hand to:

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

or

c) By email to:

compliance.southwest@environment.nsw.gov.au

6.2 The Initial Works Report must be prepared utilising the Initial Works Report template at Attachment-3 of this Order.

6.3 The Remediator must prepare and submit a Monitoring Report by the **14 March 2021** and the **14 March each year thereafter**:

a) By Registered Post to:

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

or

b) By courier or by hand to:

Team Leader Compliance and Regulation
South West Branch
NSW Department of Planning, Industry and Environment
7161 Olympic Highway

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Wagga Wagga NSW 2650

or

c) By email to:

compliance.southwest@environment.nsw.gov.au

6.4 The Monitoring Report must be prepared utilising the Monitoring Report template at Attachment-4 of this Order.

7 DEFINITIONS

In this order, the following definitions apply:

<p>“Exotic species”</p>	<p>means species introduced from outside of the area concerned; in the case of New South Wales, from overseas and/or interstate.</p> <p>Note: The source of this definition is Harden, G.W. ed. 1990-2002. <i>Flora of New South Wales: Volumes 1 – 4</i>, University of NSW Press.</p>
<p>“Remediation Area”</p>	<p>means the areas shown on the map in Attachment-1 and Attachment-2 of this Order and located within [REDACTED] which forms part of the landholding [REDACTED]</p>
<p>“Remediator”</p>	<p>means [REDACTED] and [REDACTED]</p>
<p>“Reporting Period”</p>	<p>means each annual reporting period for the duration of this Order.</p>
<p>“Weed”</p>	<p>means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i></p>

WARNING AND INFORMATION ABOUT THIS ORDER

- It is an offence against section 11.22 of the BC Act to contravene this Order without reasonable excuse or to intentionally obstruct anyone carrying out remediation work under this Order. The maximum penalty that a court may impose for this offence is:
 - for a corporation, \$660,000 plus \$66,000 for each day the offence continues, and
 - for an individual, \$132,000 plus \$13,200 for each day the offence continues.

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- If you fail to comply with this Order the Chief Executive of the Department or his delegate may authorise any other person to enter the Property and carry out all or part of the work and may then recover the cost from you (section 11.18 of the BC Act).
- This Order is issued under section 11.15 of the BC Act.
- Under section 11.15(4) of the BC Act this Order may be varied or revoked by a further order.
- Under section 11.23(1) of the BC Act, if you are aggrieved by the decision to make this Order you may appeal to the Land and Environment Court within 30 days of this Order being served on you. However, even if an appeal is lodged, you must comply with this Order, unless the Court orders otherwise.
- Under section 13.11 of the BC Act, your obligation to comply with the requirements of this Order continues until the Order is complied with, even if the due date for compliance has passed.
- The Department may conduct inspections to determine whether this Order is being complied with.
- Words and expressions have the same meaning as words and expressions used in the BC Act or Part 5A of the *Local Land Services Act 2013* (as the case may be), except where a word is specifically defined in this Order.
- A Remediation Order will not negate the potential for enforcement action (including penalty notice or prosecution). A Remediation Order is separate to any potential enforcement action.

Graeme ENDERS

Director South West Branch

Biodiversity and Conservation Division

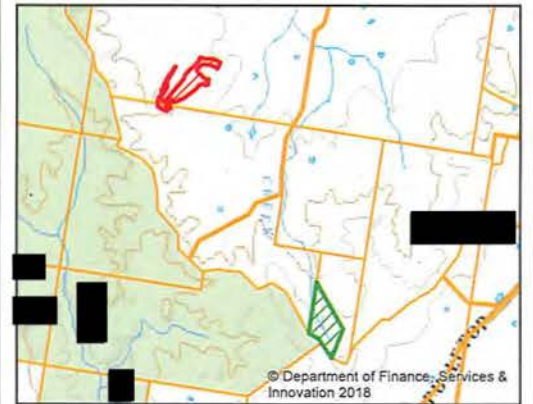
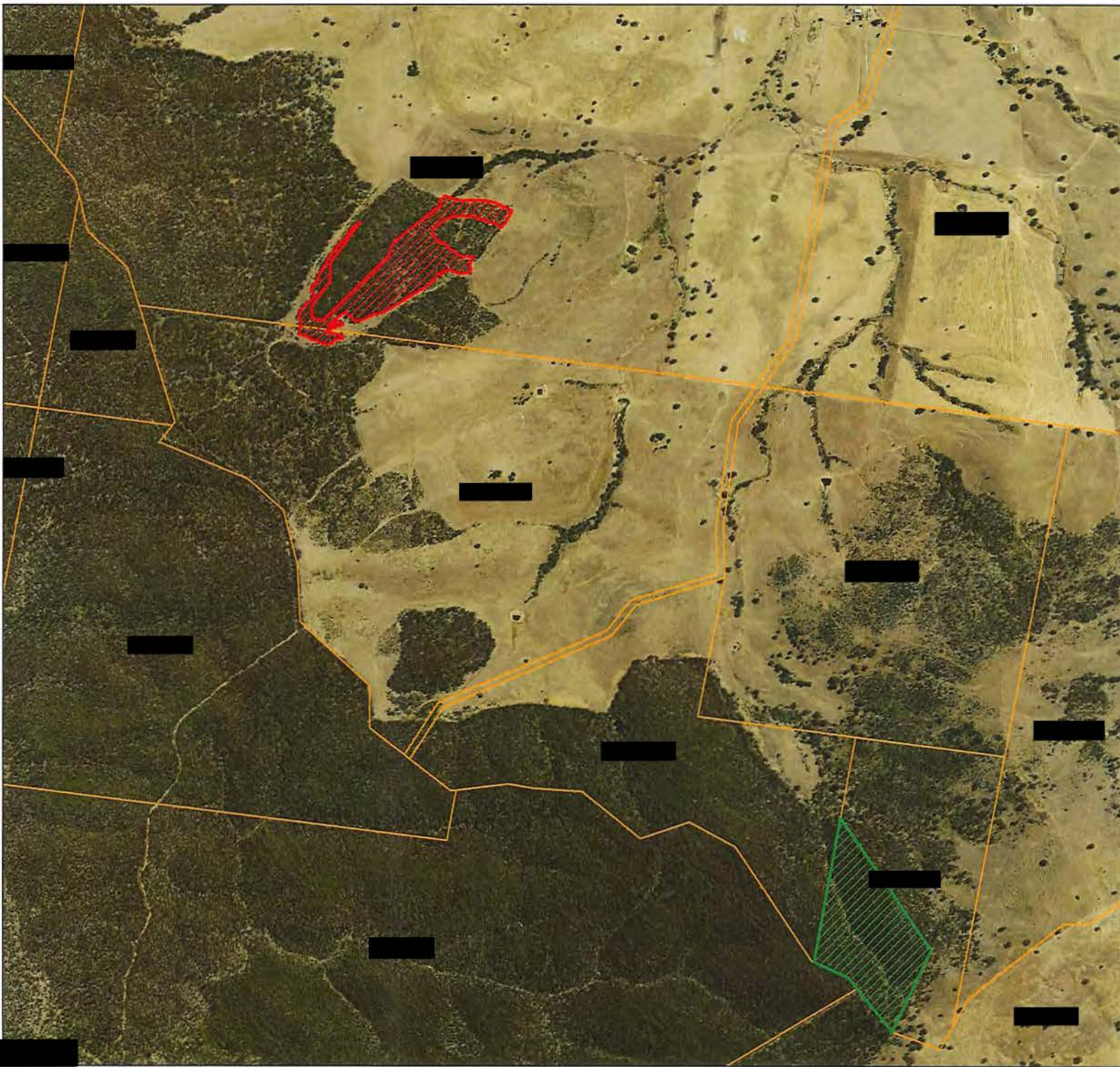
NSW Department of Planning, Industry and Environment

(by Delegation)

6/01/2020

Attachment:




1. Map-1 (Location of Remediation Area relative to Area Cleared)
2. Map-2 (Remediation Area with Coordinates)
3. Initial Works Report Template
4. Monitoring Report Template



Attachment-1 Remediation Area Map-1

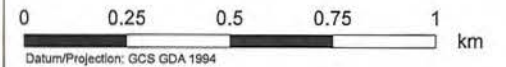
Order: 08214-2018-1

Legend

-  Area Cleared of Remnant Native Vegetation
-  Remediation Area
-  Cadastral (Lot/DP Boundary)

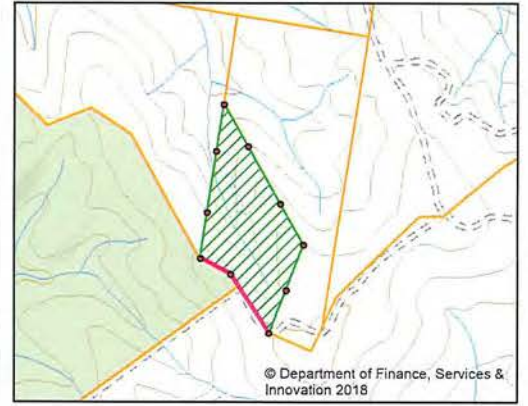
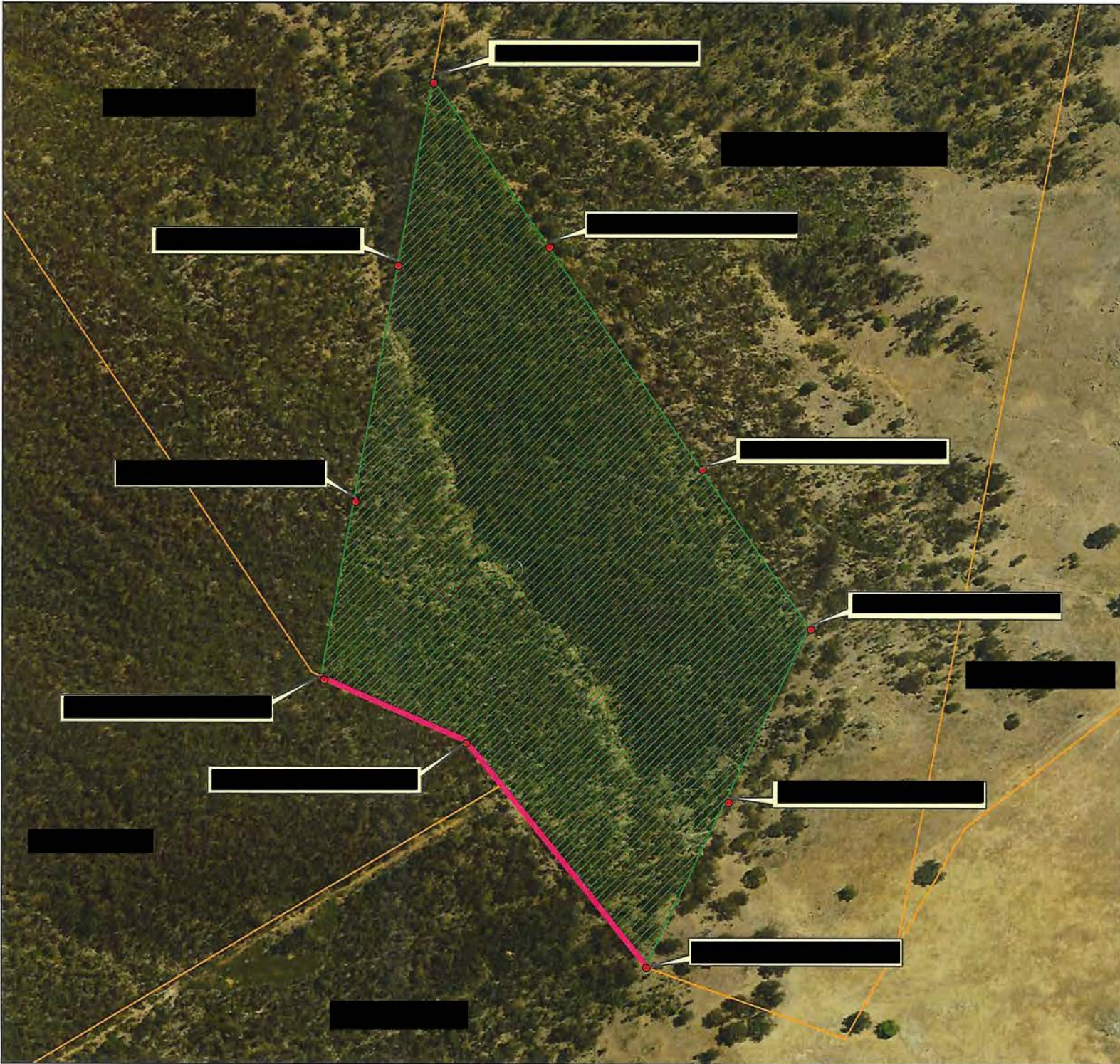


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Map Ref: 08214-2018-1 Remediation Area Map-1
 Author: [Redacted]
 Date: 19/12/2019

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 The map is not guaranteed to be free from error or omission. The Department and its employees disclaim liability for any act done on the information in the map and any consequences of such acts or omissions.



Attachment-2 Remediation Area Map-2

[Redacted]
[Redacted]
[Redacted]
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Legend

- RA Boundary Marker Post
- Allowable Fenceline Clearing Buffer (15m)
- Remediation Area (RA)
- Cadastre (Lot/DP Boundary)



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Map Ref: 08214-2018-1 Remediation Area Map-2
Author: [Redacted]
Date: 19/12/2019

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