

# Remediation Order



## ORDER ISSUED TO:

The Proper Officer

[REDACTED]  
[REDACTED]  
[REDACTED]

Notice Number: 11688-2018-1  
Case Reference Number: 11688-2018  
Date: 25/05/2020

By: Registered Post and email to [REDACTED]

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

### BACKGROUND

- A. The Department of Planning, Industry and Environment (**the Department**) has responsibilities regarding the administration and enforcement of the *Biodiversity Conservation Act 2016 (NSW)* (**the BC Act**) and its associated Regulations, and responsibilities regarding the enforcement of Part 5A of the *Local Land Services Act 2013 (NSW)* (**the LLS Act**) and the Regulations under that Part.
- B. Pursuant to section 11.15 of the BC Act, if the Secretary of the Department is satisfied that an area, habitat, plant, animal or native vegetation as specified in section 11.15(1) has been damaged in or as a result of the commission of an offence against the BC Act or regulations or against Part 5A of the LLS Act or regulations, the Secretary may order a person to carry out specified remediation work in a specified manner and within a specified time.
- C. The power to issue a remediation order under the BC Act may be exercised for the purposes of the BC Act or Part 5A of the LLS Act (section 11.2 BC Act).
- D. Graeme ENDERS holds the position of Director South West Branch, Biodiversity and Conservation Division within the Department.
- E. 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.
- F. [REDACTED] are the owners of [REDACTED] which forms part of the landholding [REDACTED] (**the Property**), and is the parcel of land where the clearing of native vegetation contrary to section 60N of the LLS Act occurred.
- G. The registered Director of [REDACTED] is [REDACTED].
- H. [REDACTED] is the owner of [REDACTED] which forms part of the landholding [REDACTED], and is the parcel of land where the Remediation Area is located.

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## BASIS FOR ISSUING REMEDIATION ORDER

- I. The Property is categorised on the draft Native Vegetation Regulatory Map, prepared pursuant to the LLS Act, as Category 2 – Regulated Land.
- J. The Department has investigated an allegation relating to the unauthorised clearing of native vegetation in a regulated rural area on the Property between 03/01/2018 and 13/05/2018.
- K. Under section 60N of the LLS Act, it is an offence to clear native vegetation in a regulated rural area.
- L. The Department's investigation determined that the clearing of 8ha of native vegetation in a regulated rural area occurred on the Property between 03/01/2018 and 13/05/2018 and that the clearing was conducted contrary to section 60N of the LLS Act, none of the available defences listed in the LLS Act and associated Regulations apply.
- M. On the 18/04/2019 [REDACTED] was issued a penalty notice for clearing native vegetation contrary to 60N of the LLS Act.
- N. The works required by this Order provide for the mitigation of damage sustained to the Property by clearing native vegetation in a regulated rural area contrary to section 60N of the LLS 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 section 60N 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 Billabar Investments Pty Ltd (**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:

### 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.
- 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 26ha of remnant native vegetation.
- 1.3 Any clearing or removal of native vegetation within the Remediation Area must be approved in writing by the Department prior to the clearing being carried out.

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## 2 EXCLUSION OF REMEDIATION AREA

### Fencing and Stock Management

- 2.1 By the **31/07/2020** the Remediator must construct or install a fence or other barrier for the purposes of excluding stock from the Remediation Area. If areas adjoining the Remediation Area are not stocked, the Remediator is not required to construct or install the fence or barrier
- 2.2 By the **31/07/2020** the Remediator must install clearly identifiable coloured marker posts along the perimeter of the Remediation Area at intervals no greater than thirty (30) metres for the purposes of clearly identifying the Remediation Area from other areas of the Property.
- 2.3 The Remediator must inspect the fence or barrier excluding stock from the Remediation Area, and coloured marker posts around the perimeter of the Remediation Area to ensure the fence or barrier, and coloured marker posts are in good condition and compliant with the requirements of condition 2.1 and 2.2 at least once every twelve (12) month Reporting Period. If at any time the Remediator becomes aware that the fence or barrier, or the coloured markers posts do not meet the requirements referred to in condition 2.1 and 2.2, the Remediator must repair the fence or barrier, or replace the coloured marker posts as soon as practicable and in any event within fourteen (14) days of becoming so aware, to ensure the fence or barrier, and the coloured marker posts meet the requirements referred to in condition 2.1 and 2.2.
- 2.4 If a fence or barrier is required to exclude stock from the Remediation Area in accordance with condition 2.1, any gates or associated points of access in the fence or barrier must be constructed in such a manner as to exclude stock from the Remediation Area.
- 2.5 Stock must initially be removed from the Remediation Area by the Remediator by the **31/07/2020**. Any stock found within the Remediation Area after the **31/07/2020** must be removed by the Remediator as soon as practicable and in any event within fourteen (14) days of becoming so aware, unless such stock is within the Remediation Area in accordance with Sustainable Grazing conditions outlined within this Order.
- 2.6 If at any time stock is found within the Remediation Area outside of authorised Sustainable Grazing periods, the Remediator must inspect the fence or barrier as soon as practicable and in any event within fourteen (14) days of becoming so aware, to determine if it continues to meet the requirements referred to in condition 2.1.

## 3 SUSTAINABLE GRAZING

- 3.1 Sustainable Grazing (**Grazing**) within the Remediation Area is only permitted in accordance with and adherence to the following conditions and requirements:
  - a) Grazing is not to exceed eight (8) weeks in any one (1) calendar year;
  - b) Grazing periods are not to exceed two (2) weeks within any grazing period;
  - c) Grazing periods are not to be less than eight (8) weeks apart;
  - d) Stock numbers are to be determined by the Remediator after assessing the quality and density of the groundcover within the Remediation Area;
  - e) Grazing is to cease within the grazing period or be excluded when groundcover is less than 70% within the Remediation Area;
  - f) Grazing is to be excluded during periods of drought;

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- g) Grazing must not occur at any time between the months of November and January when most native plants are setting seed; and
- h) Any soil erosion within the Remediation Area must be controlled and managed by the Remediator.

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

- 4.1 Any exotic species, commercial crops or non-native plant species found within the Remediation Area after **31/072020** must be removed by the Remediator as soon as practicable and in any event within fourteen (14) days of becoming so aware.
- 4.2 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.
- 4.3 The Remediator must inspect the Remediation Area for to exotic species, commercial crops or non-native plant species at least once every Reporting Period.

## 5 NOTIFIABLE INCIDENTS, EVENTS, OR ACTIVITIES

- 5.1 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 adversely impacts or affects 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 adversely impacts or affects the health of native vegetation and/or native animal species within the Remediation Area.
- 5.2 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 adversely impacts or affects the health of native vegetation and/or native animal species within the Remediation Area.

## 6 RECORDS

- 6.1 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.
- 6.2 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.

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- 6.3 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.

## 7 REPORTING

7.1 The Remediator must prepare and submit an Initial Works Report by the **14/082020**:

- 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 2650or
- 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 2650or
- c) By email to:
  - [compliance.southwest@environment.nsw.gov.au](mailto:compliance.southwest@environment.nsw.gov.au)

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

7.3 The Remediator must prepare and submit a Monitoring Report by the **14/08/2021** and the **14 August 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 2650or
- b) By courier or by hand to:

# Remediation Order



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](mailto:compliance.southwest@environment.nsw.gov.au)

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

## 8 DEFINITIONS

In this order, the following definitions apply:

<b>Exotic species</b>	means species introduced from outside of the area concerned; in the case of New South Wales, from overseas and/or interstate.  <b>Note:</b> 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.
<b>Remediation Area</b>	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].
<b>Remediator</b>	means [REDACTED].
<b>Reporting Period</b>	means each annual reporting period for the duration of this Order.
<b>Stock</b>	means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, pigs and goats). It does not include native wildlife.
<b>Sustainable Grazing</b>	is described in the LLS Act as grazing by livestock, and the management of grasslands used for grazing, that is not likely to result in the substantial long-term decline of the structure and composition of native vegetation.
<b>Term</b>	means the period of time for which this Order is enforceable. This Order has a term of fifteen (15) years from the date of issue.

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<b>Weed</b>	means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i>
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## 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 our 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.
- 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.

A handwritten signature in black ink, appearing to read 'Graeme Enders'.

26<sup>th</sup> May 2020

Graeme ENDERS  
Director South West Branch,  
Biodiversity and Conservation Division  
NSW Department of Planning, Industry and Environment  
(by Delegation)

# Remediation Order

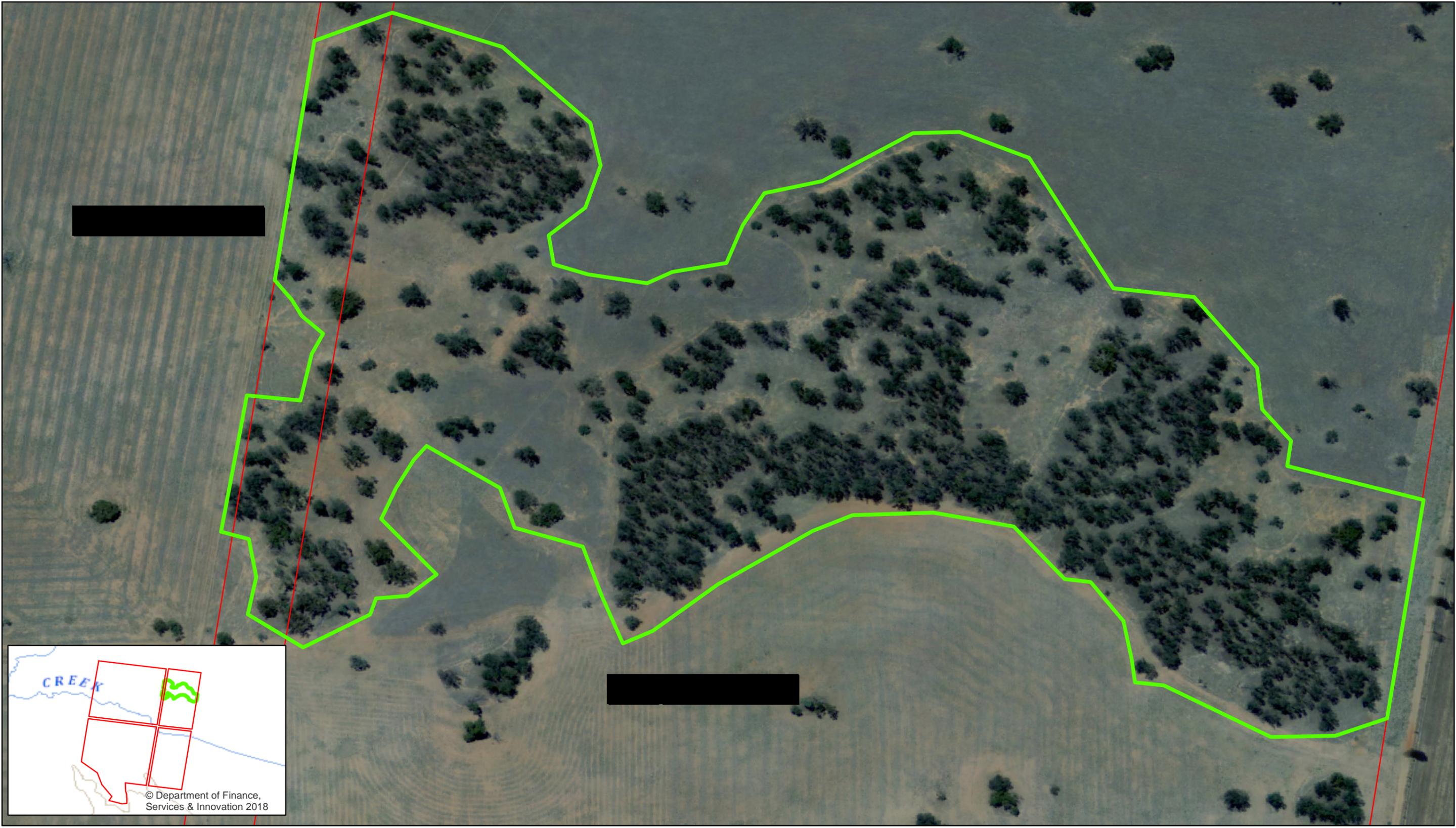
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**Attachments:**

1. Remediation Area Map-1
2. Remediation Area Map-2
3. Initial Works Report Template
4. Monitoring Report Template



**Legend**

 Proposed Remediation Area (26ha)

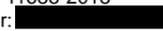
 Boundary 

## Attachment-1 REMEDIATION AREA (Map-1) Remediation Order: 11688-2018-1



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This 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.

0 0.03 0.06 0.09 0.12 km  
Datum/Projection: GCS GDA 1994

Map Ref: Remediation Area (Map-1)  
Case: 11688-2018  
Author:   
Date: 29/04/2020

 **NSW**  
GOVERNMENT

**Planning,  
Industry &  
Environment**





**Legend**

- Proposed Remediation Area (26ha)
- Boundary [REDACTED]

## Attachment-2 REMEDIATION AREA (Map-2) Remediation Order: 11688-2018-1

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Map Ref: Remediation Area (Map-2)  
Case: 11688-2018  
Author: [REDACTED]  
Date: 29/04/2020



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