

Remediation Order

ORDER ISSUED TO:

[REDACTED]

Order Number: 202203719-1

Case Reference Number: 202203719

Issue Date: 17/06/2024

Property:

[REDACTED]

By: Email and Register Post.

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

Who are we: The Department of Climate Change, Energy, the Environment and Water (**DCCEEW**)(**the Department**) has responsibilities regarding the administration and enforcement of the *Biodiversity Conservation Act 2016* (NSW) (**BC Act**) and its associated Regulations, and responsibilities regarding the enforcement of Part 5A of the *Local Land Services Act 2013* (NSW) (**LLS Act**) and the Regulations under that Part.

Why we serve remediation orders: Pursuant to section 11.15 of the BC Act, if the Environment Agency Head (**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 Environment Agency Head may order a person to carry out specified remediation work in a specified manner and within a specified time.

What you are required to do: The works required by this remediation order provide for the control, abatement and mitigation of the damage and/or maintenance, remediation, restoration of the damaged area of the Property. Section 11.16(2) of the BC Act requires you to carry out remediation work required by this Order.

When are you required to act: Immediately from the date of issue.

What happens if you don't comply: 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. Contravention of this Order has a maximum penalty of Tier 2. The maximum penalty that a court may impose for a Tier 2 offence is \$660,000 (plus \$66,000 for each day the offence continues) for a corporation, and \$132,000 (plus \$13,200 for each day the offence continues) for an individual.

What your appeal rights are: Section 11.23(1) of the BC Act allows for a person given a remediation order to appeal against the giving of the Order (or any terms of the order) to the NSW Land and Environment Court within 30 days of the service of the Order. However, even if an appeal is lodged, you must comply with this Order, unless the Court orders otherwise. More

Remediation Order

information on appeals can be found on the NSW Land and Environment Court website <http://www.lec.justice.nsw.gov.au>.

BACKGROUND

- A. [REDACTED] holds the position of A/Senior Team Leader Compliance and Regulation, Regional Delivery Division - South West, within the Department.
- B. [REDACTED] holds delegated authority on behalf of the Agency Head of the Department for the purposes of section 11.15 of the BC Act.
- C. [REDACTED] and [REDACTED] are the joint owners on title (**Landholders**) of the land parcel [REDACTED], which forms part of the property at [REDACTED] (**the Property**) upon which the clearing of native vegetation contrary to section 60N of the LLS Act occurred.

BASIS FOR ISSUING REMEDIATION ORDER

- D. On the 03/03/2022, the Departments Early Change Monitoring (**ECM**) Program detected changes in vegetation cover on the Property.
- E. The Department has investigated the changes in vegetation cover detected on the Property and the allegations relating to the unauthorised clearing of native vegetation in a regulated rural area on the Property between October 2021 and March 2022.
- F. Under section 60N of the LLS Act, it is an offence to clear native vegetation in a regulated rural area.
- G. Under section 2.4 of the BC Act, it is an offence to damage a threatened ecological community.
- H. The Department's investigation determined that [REDACTED] permitted the clearing of 2ha of native vegetation on the Property between the October 2021 and March 2022. The clearing was conducted by [REDACTED] for the purposes of harvesting Broombush (*Melaleuca uncinata*). The area cleared was Category-2 (Sensitive) Regulated Land and a State listed Critically Endangered Ecological Community (**CEEC**) being Mallee and Mallee-Broombush dominated woodland and shrubland, lacking *Triodia*.
- I. The Departments investigation found the clearing was conducted contrary to section 60N of the LLS Act, and none of the available defences listed in the LLS Act and associated Regulations apply. The clearing was also found to have been conducted contrary to section 2.4 of the BC Act in which damage was caused to a State listed CEEC.
- J. The works required by this Order provides for the remediation of damage sustained to the Property where the clearing of native vegetation occurred contrary to section 60N of the LLS Act and section 2.4 of the BC Act.
- K. Section 11.16(2) of the BC Act requires you to carry out the remediation work required by this Order.

Remediation Order

OPINION

- L. I. [REDACTED] A/Senior Team Leader Compliance and Regulation - South West, Regional Delivery Division, am satisfied that 2ha of native vegetation has been cleared as the result of an offence against section 60N of the LLS Act and that act resulted in the damage to a State listed CEEC which is an offence against section 2.4 of the BC Act.

ORDER TO CARRY OUT REMEDIATION WORK

- M. In order to mitigate the damage to the area concerned:

I. [REDACTED] A/Senior Team Leader Compliance and Regulation - South West, Regional Delivery Division, order [REDACTED] and [REDACTED] (**the Remediators**) to carry out the following remediation work on the Property for a period of **ten (10) years** from the issue date of this Order (**the Term**).

1 REMEDIATION AREA

- 1.1 In this Order, Remediation Area means the area identified for remediation on the map at Attachment-1A (Map-1) and 1B (Map-2) of this Order.
- 1.2 The Remediation Area is located within [REDACTED] of the Property.
- 1.3 The Remediation Area is categorised as Cat-2 (Sensitive) Regulated Land on the draft Native Vegetation Regulatory (**NVR**) Map.
- 1.4 The Remediation Area is 24ha.
- 1.5 Native vegetation within the Remediation Area is to be allowed to naturally regenerate for the Term of the Order.
- 1.6 After at least three (3) years of natural regeneration the Department will assess the density of native vegetation regeneration within the Remediation Area to determine the success of natural regeneration. If the vegetation density is determined to be below benchmark for the Plant Community Type (**PCT**) within the Remediation Area, the Department may require the Remediator to carryout supplementary seeding or planting within the Remediation Area to bring the vegetation density to benchmark for the associated PCT. If the Department determines supplementary seeding or planting is required, the Department will advise the Remediator in writing and that requirement will become an Annexure of this Order.

2 REQUIREMENTS (WHAT YOU MUST DO TO COMPLY)

- 2.1 Within four (4) weeks of the issue date of this Order the Remediator **must** remove all stock from within the Remediation Area. Stock is not permitted within the Remediation Area for the Term of the Order.
- 2.2 Fencing of the Remediation Area is not required unless areas adjoining the Remediation Area contain stock. If areas adjoining the Remediation Area contain stock the Remediator **must** construct a fence (including access gates) around the perimeter of the Remediation Area within ten (10) weeks of the issue date of this Order.
- 2.3 If areas adjoining the Remediation Area do not contain stock and a fence is not required, the Remediator **must** install coloured markers post (at intervals of no greater than 50 meters) around the perimeter of the Remediation Area for the purposes of clearly identifying the Remediation Area from other areas of the Property within eight (8) weeks of the issue date of this Order.

Remediation Order

- 2.4 In accordance with NSW Department of Primary Industries (DPI) [Best Practice Management Guides](#), the Remediator **must** effectively manage weeds, exotic species, non-native plants, and commercial crops within the Remediation Area for the Term of the Order. Only selective methods (non-mechanised) of poisoning and/or manual removal are to be used.
- 2.5 In accordance with NSW DPI [NSW Codes of Practice and Standard Operating Procedures for the effective and humane management of pest animals](#), the Remediator **must** effectively and humanely manage pest herbivore species within the Remediation Area for the Term of the Order.
- 2.6 Within 4 weeks of the issue date of this Order the Remediator **must** erect signage so that any person entering the Remediation Area becomes aware of the Remediation Area and does not use the land in a manner that would contradict this Order.
- 2.7 The Remediator **must** abate human disturbances to the Remediation Area for the Term of the Order.
- 2.8 No dams, levy banks, drainage lines, sheds or other rural infrastructure are to be constructed within the Remediation Area during the Term of the Order unless pre-approved in writing by the Department.
- 2.9 The following activities are **prohibited** within the Remediation Area unless pre-approved in writing by the Department:
- Soil disturbance (including cultivation),
 - Clearing of any native vegetation,
 - Stock Grazing,
 - Removal of fallen timber,
 - Aerial or boom spraying, and
 - Storage of waste, rubbish, machinery, or surplus farming materials.
- 2.10 The Remediator **must** notify the Department as soon as practicable and in any event within fourteen (14) days of becoming aware of any incident, event or activity that causes an adverse impact on the Remediation Area or adversely affects the health of the Remediation Area. This may include:
- a) fire,
 - b) flood, or
 - c) any other incident, event or activity that may adversely impact or affect the health of the Remediation Area.
- 2.11 The Remediator is responsible for all costs associated with implementing and complying with the conditions of this Order.
- 2.12 The Order will remain in force for the Term of the Order unless, amended, revoked, or varied by the Department.
- 2.13 The Remediator **must** provide reasonable access to staff of the Department for the purposes of administering this Order which includes providing access to inspect the Remediation Area as required.

3 MONITORING AND REPORTING REQUIREMENTS

- 3.1 The Remediator **must** notify the Department when the initial works associated with the Order have been completed. The Remediator **must** complete and submit the Initial Works

Remediation Order

Declaration (**IWD**) provided by the Department at Attachment-2 of this Order. The Remediator **must** submit the IWD to the Team Leader Compliance and Regulation – South West within ten (10) weeks from the date of issue of this Order.

3.2 The Remediator **must** inspect the Remediation Area for the purposes of determining:

- The presence of weeds, exotic species, non-native plants, and commercial crops within the Remediation Area,
- The presence of pest herbivores within the Remediation Area,
- The presence and impact of stock within the Remediation Area,
- The condition and serviceability of fencing or marker posts, and
- Whether any notifiable incidents, events or activities have occurred within the Remediation Area.

3.3 The Remediator **must** complete and submit an Annual Monitoring Report (**AMR**) each calendar year for the Term of the Order. The AMR **must** be received by the Department by the 14th day of July each calendar year following the issuance of the Order. The AMR **must** be posted or emailed to the Team Leader Compliance and Regulation, South West Branch by the date specified. Failure to do so may result compliance action. A copy of the AMR template has been provided at Attachment-3 of this Order.

3.4 The Remediator **must** inform any future purchasers of the land, of this Order.

3.5 The Remediator **must** include the details of the Remediation Order in the contract of sale.

3.6 The Remediator **must** notify the Team Leader Compliance and Regulation – South West within fourteen (14) days of settlement of sale of the land subject to this Order.

3.7 At any time should the Remediator need clarification or explanation of the requirements and obligations associated with this Order, the Remediator should contact the Team Leader Compliance and Regulation – South West.

3.8 The Remediator **must** submit all reports and correspondence relating to this Order to the Team Leader Compliance and Regulation – South West:

a) By Registered Post to:

Team Leader Compliance and Regulation – South West
NSW Department of Planning and Environment
PO Box 1040 Albury NSW 2640

or

b) By email to: compliance.southwest@environment.nsw.gov.au

4 RECORD KEEPING

4.1 The Remediator **must** retain copies of all records associated with this Order for the Term of the Order. All records are to be true, accurate, correct and in legible form.

5 DEFINITIONS

In this Order, the following definitions apply:

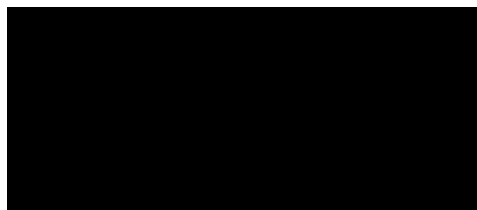
Remediation Order

Term	Definition
BC Act	The <i>Biodiversity Conservation Act 2016</i> .
Damage	Damage has the same meaning as defined in section 11.14 of the <i>Biodiversity Conservation Act 2016</i> .
The Department	The NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW).
Exotic species or Non-Native Species	Means species introduced from outside of the area concerned; in the case of New South Wales, from overseas and/or interstate. 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.
LLS Act	The <i>Local Land Services Act 2013</i> .
Native vegetation	Has the same meaning as defined in Part 5A of the <i>Local Land Services Act 2013</i> .
Order	Means this document: A Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i> .
Pest herbivores	Means hares, rabbits, and goats but does not include livestock.
Remediator	Means the person named in this Order and who is responsible for adhering to and complying with the Order.
Remediation Area	Means the areas shown on the attached maps to this Order and located within the parcels of land identified by this Order.
Reporting Period	Means each annual reporting period (1 July to 30 June) from the commencement of this Order and for the Term of this Order.
Stock	Means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, pigs and goats). It does not include native wildlife.
Term	Means the duration of the Order from the date of issue.
The Property	Means the land parcels identified in this Order that are subject to the conditions of the Order.
Weed	Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> .

Remediation Order

WARNING AND INFORMATION ABOUT THIS ORDER

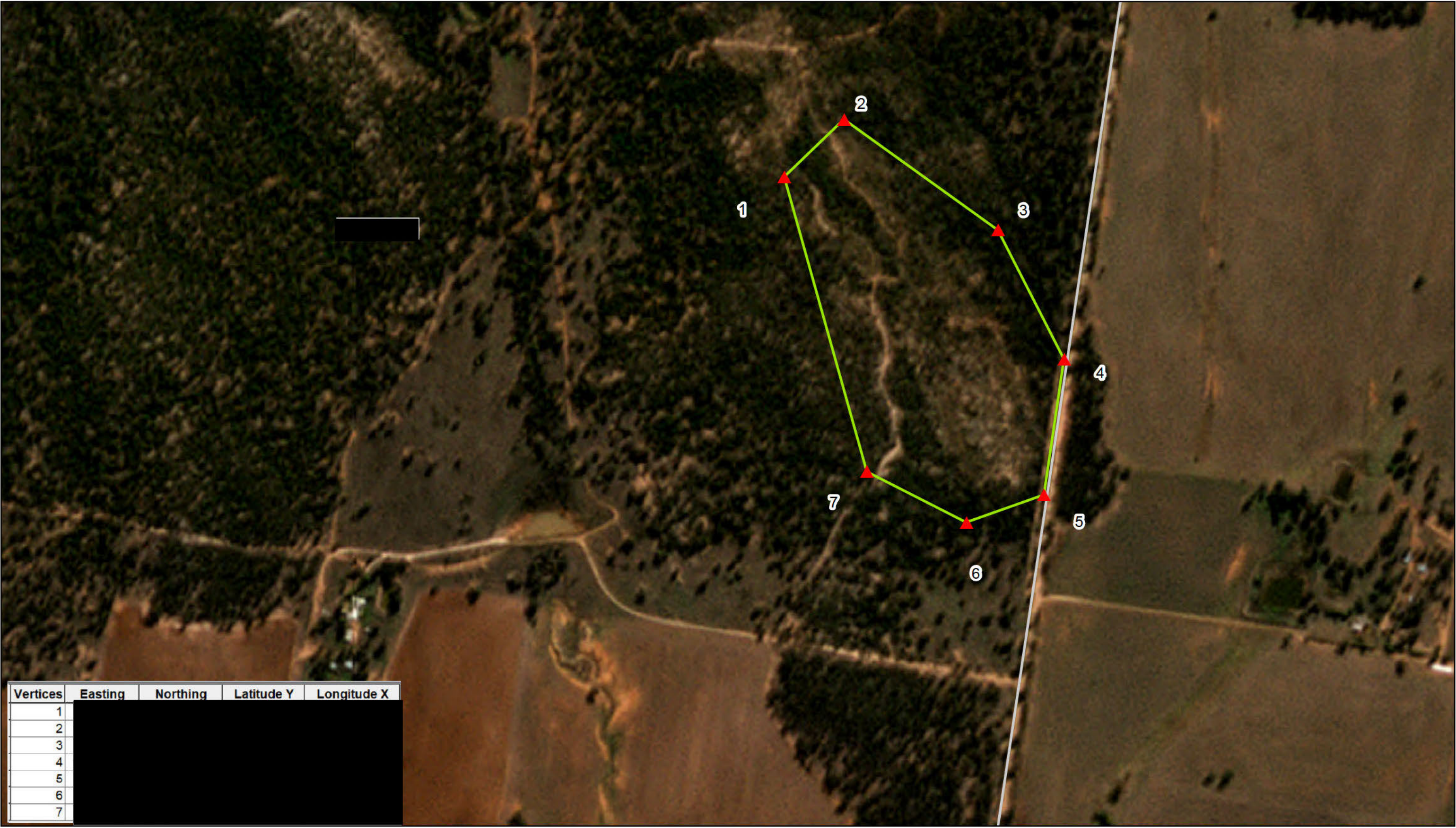
- It is an offence against section 11.22 of the BC Act to contravene this Order without reasonable excuse or to intentionally obstruct anyone carrying out remediation work under this Order. The maximum penalty that a court may impose for this offence is:
 - for a corporation, \$660,000 plus \$66,000 for each day the offence continues, and
 - for an individual, \$132,000 plus \$13,200 for each day the offence continues.
- If you fail to comply with this Order the Agency Head 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/Senior Team Leader Compliance and Regulation
Regional Delivery Division - South West
DCCEEW
(by Delegation)

Attachments to Order:

1. 1A and 1B (Remediation Area Maps)
2. Initial Works Declaration
3. Annual Monitoring Report Template



Vertices	Easting	Northing	Latitude Y	Longitude X
1				
2				
3				
4				
5				
6				
7				




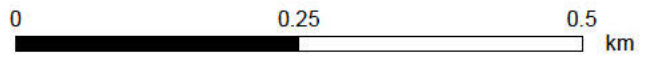
-  vertices
-  Remediation Order
-  Lot



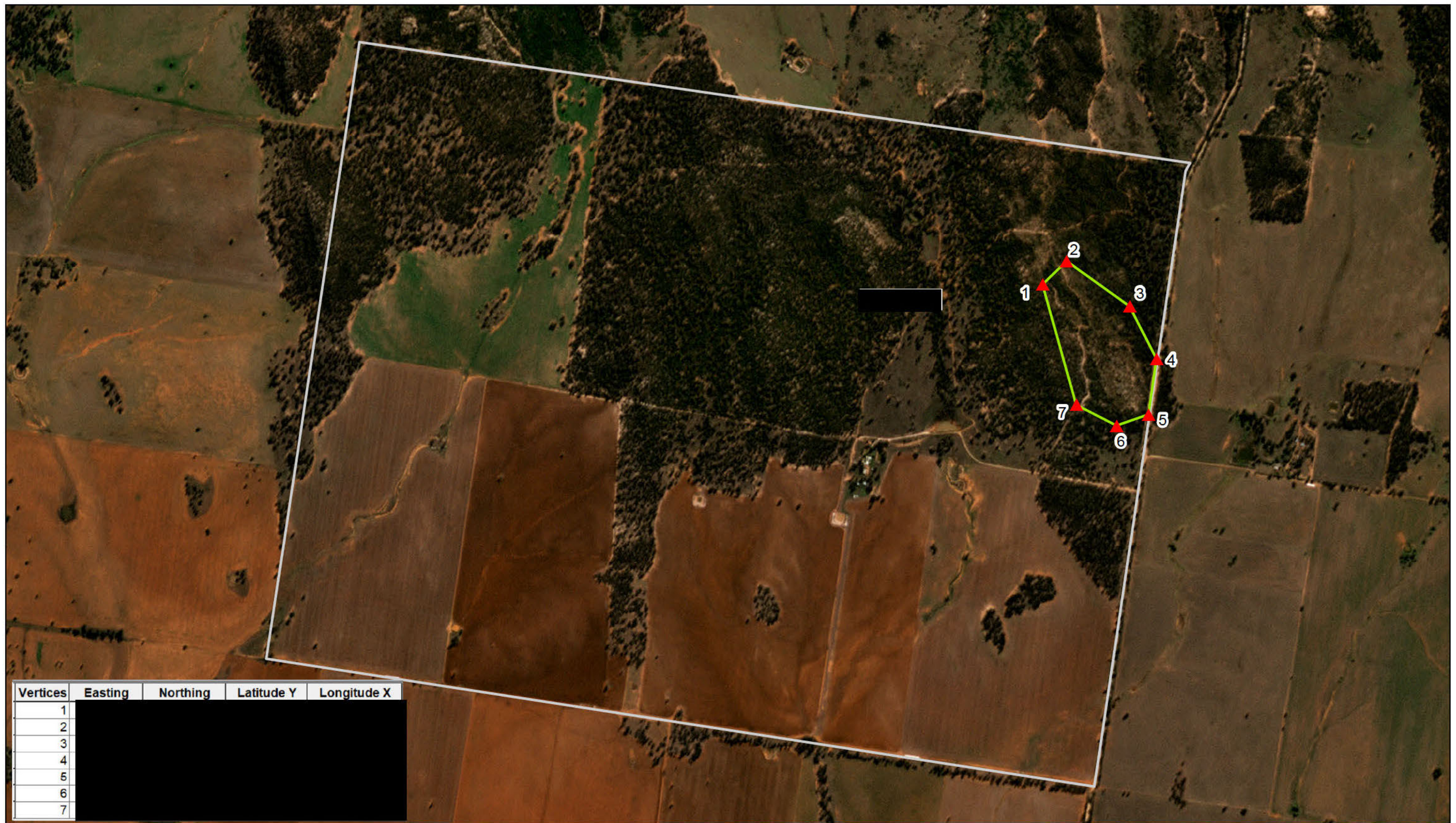
Image: May 2024

Copyright of Department of Climate Change, Energy, the Environment and Water (DCCEEW). 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.



Datum/Projection: GCS GDA 1994





Vertices	Easting	Northing	Latitude Y	Longitude X
1				
2				
3				
4				
5				
6				
7				




-  vertices
-  Remediation Order
-  Lot



Image: May 2024



Datum/Projection: GCS GDA 1994



Copyright of Department of Climate Change, Energy, the Environment and Water (DCCEEW). 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.