

Remediation Order



Planning,
Industry &
Environment

ORDER ISSUED TO:

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

Notice Number: 201900351-1
Case Reference Number: 201900351
Date: 20/05/2020

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(**the Department**) has responsibility for the enforcement of the *Local Land Services Act 2017 (LLS Act)* and the repealed *Native Vegetation Act 2003 (NV Act)*.
- B. The NV Act was repealed on 25 August 2017.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 the following parcels of land which forms part of the landholding [REDACTED] at [REDACTED]

Remediation Order



██ (the Property) upon which the clearing of native vegetation occurred:

- ██████████ and ████████ of ██████████
- ████████ of ██████████, and
- ████████ of ██████████

H. ██████████ and ██████████ are the joint owners of the following parcels of land which forms part of the landholding ██████████ at ██████████ upon which the Remediation Area totalling 69ha is located:

- ██████████, and
- ██████████

BASIS FOR ISSUING REMEDIATION ORDER

- I. The Department investigated a self-report made by ██████████ relating to the clearing of native vegetation on the Property between September 2016 and September 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 indicates that the **unlawful clearing of 34.72ha of native vegetation** occurred on the Property to between September 2016 and August 2017 contrary to section 12 of the NV Act and between March 2018 and September 2018 contrary to section 60N of the LLS Act, and that none of the available statutory defences listed in the NV Act or LLS Act and associated Regulations in relation to the offences apply.
- M. On the 13/02/2020 ██████████ was issued two (2) penalty notices for clearing 22.17ha of native vegetation contrary to section 12 of the NV Act and 12.62ha of native vegetation contrary to section 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 contrary to section 12 of the NV Act and 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 12 of the NV Act and 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 ██████████ (the Remediator) to carry out the following remediation

Remediation Order



work on the Property within the time specified, if any, for each work, or where no time is specified, **for a period of fifty (50) years** from the date of this Order:

1 REMEDIATION AREA

- 1.1 In this Order, Remediation Area means the area identified within [REDACTED] and [REDACTED] as the Remediation Area on the attached map titled Attachment-1 Remediation Area Map-1 and Attachment-2 Remediation Area Map-2.
- 1.2 Any clearing within the Remediation Area, including clearing for Allowable Activities must be approved in writing by the Department prior to the clearing being carried out.

2 EXCLUSION OF REMEDIATION AREA

Fencing and Stock Management

- 2.1 The Remediator is not required to construct a fence around the perimeter of the Remediation Area, however is required by **31/07/2020** to install clearly identifiable coloured marker posts in each corner of the Remediation Area and along the perimeter of the Remediation Area at intervals no greater than fifty (50) metres for the purposes of clearly identifying the Remediation Area from other areas of the Property.
- 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 required to remove all livestock (**stock**) from the Remediation Area by **31/07/2020**.
- 2.4 The Remediator is not required to construct a fence around the perimeter of the Remediation Area only as long as adjoining areas of the Property do not contain stock.
- 2.5 If adjoining areas of the Property are intended to be stocked the Remediator must prior to stocking adjoining areas of the Property, erect temporary fencing or construct a permanent fence for the purposes of excluding stock from the Remediation Area for the duration the adjoining areas of the Property contain stock.

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 **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.
- 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 exotic species, commercial crops or non-native plant species at least once every twelve (12) month Reporting Period.

Remediation Order



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 (in writing or by email) of any incident, event, or activity that has or may impact on or affect the health of native vegetation and/or native animal species within the Remediation Area. This may include:
- fire;
 - flood;
 - storm; or
 - any other incident, event, or activity that has or may impact on 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 has impacted or affected 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:
- the date(s) on which the inspection was undertaken;
 - the name of the person who undertook the inspection; and
 - 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):
- details of any required work within the Remediation Area;
 - the date(s) this work was undertaken;
 - the date on which this work was completed; and
 - the name of the person who performed the work undertaken.
- 5.3 All records required to be kept by this Order must be:
- true, accurate and correct;
 - in a legible form, or in a form that can readily be reduced to a legible form;
 - kept for at least four (4) years after the inspection or event to which they relate took place; and
 - produced in a legible form to any Authorised Officer of the Department who asks to see them.

6 REPORTING

- 6.1 The Remediator must prepare and submit an Initial Works Report by the **14/07/2020**:
- By Registered Post to:
Team Leader Compliance and Regulation
South West Branch
NSW Department of Planning, Industry and Environment

Remediation Order



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 **14/07/2021** and the **14 July 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
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.

Remediation Order



7 DEFINITIONS

In this order, the following definitions apply:

Exotic 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.
Remediation Area	means the area shown on the map in Attachment-1 and Attachment-2 of this Order and located within the parcels of land identified within this Order which forms part of the landholding [REDACTED].
Remediator	means [REDACTED] and [REDACTED].
Reporting Period	means each annual twelve (12) month reporting period for the duration 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 period of time for which this Order is enforceable. This Order has a term of fifty (50) years from the date of issue (20/05/2020).
Weed	means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i>

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 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

Remediation Order



Planning,
Industry &
Environment

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 that reads 'Graeme Enders'.

19th May 2020

Graeme ENDERS

Director South West Branch

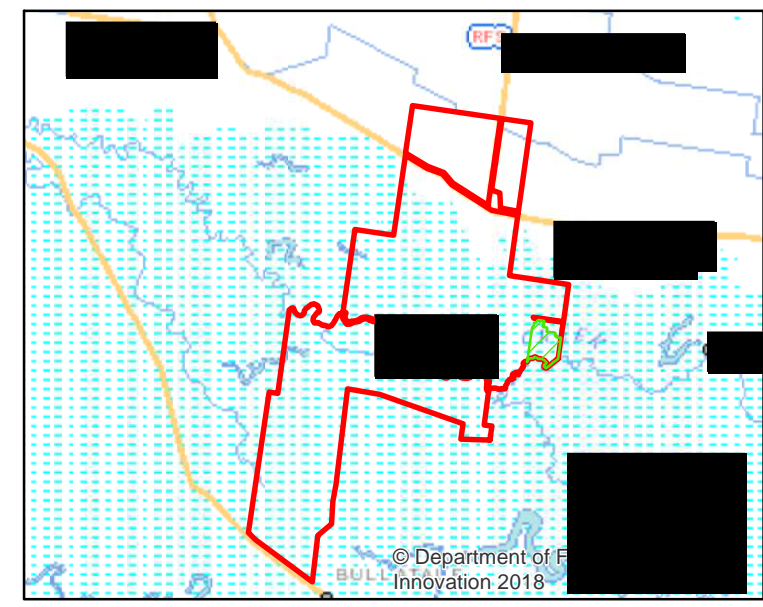
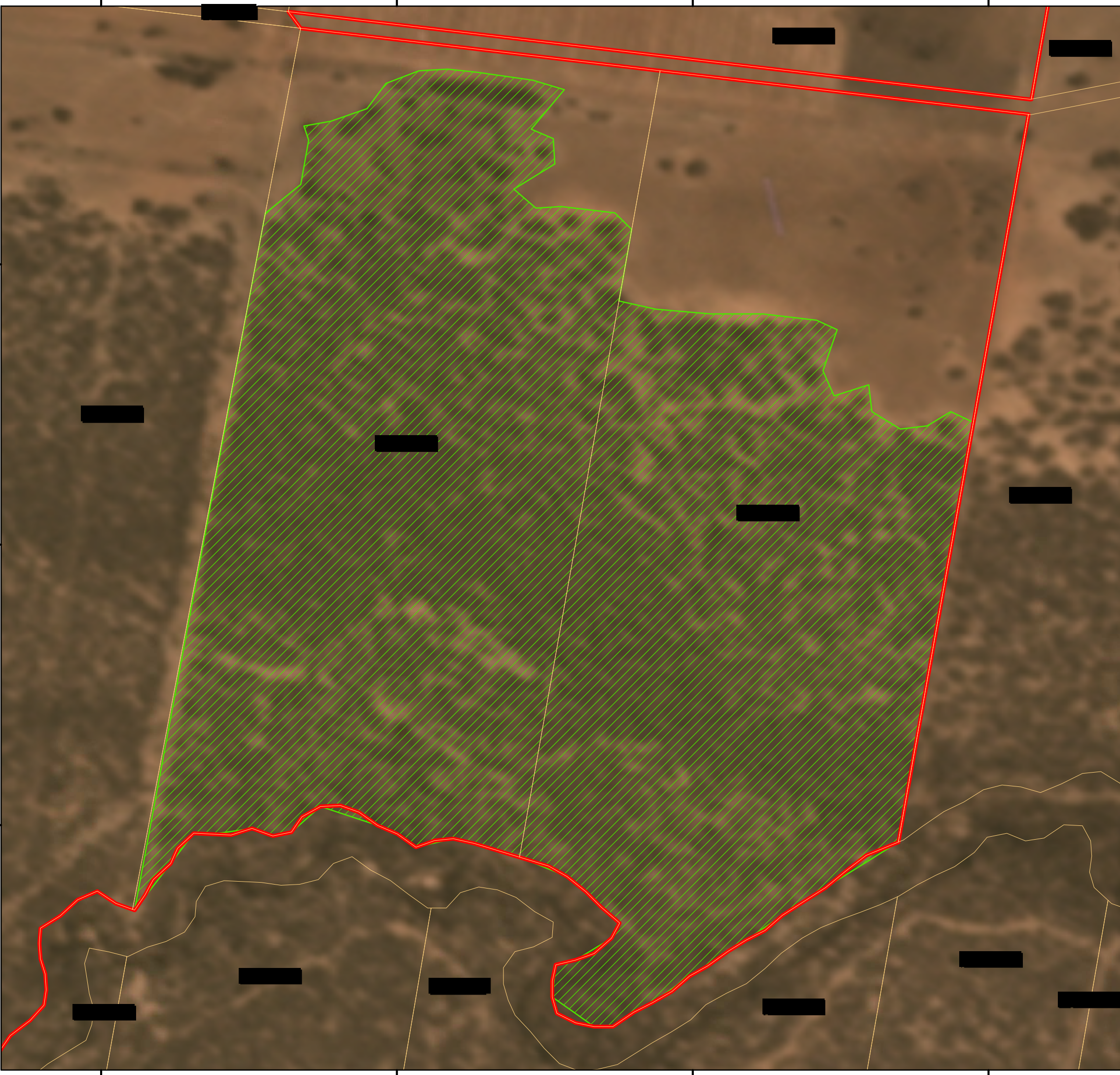
Biodiversity and Conservation Division

NSW Department of Planning, Industry and Environment

(by Delegation)

Attachment:

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



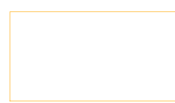

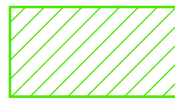
**Remediation Order
201900351-1**

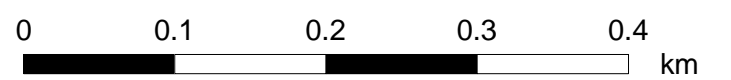
[Redacted]

**Attachment-1 (Map-1)
Remediation Area**

Image Date: 12/2019

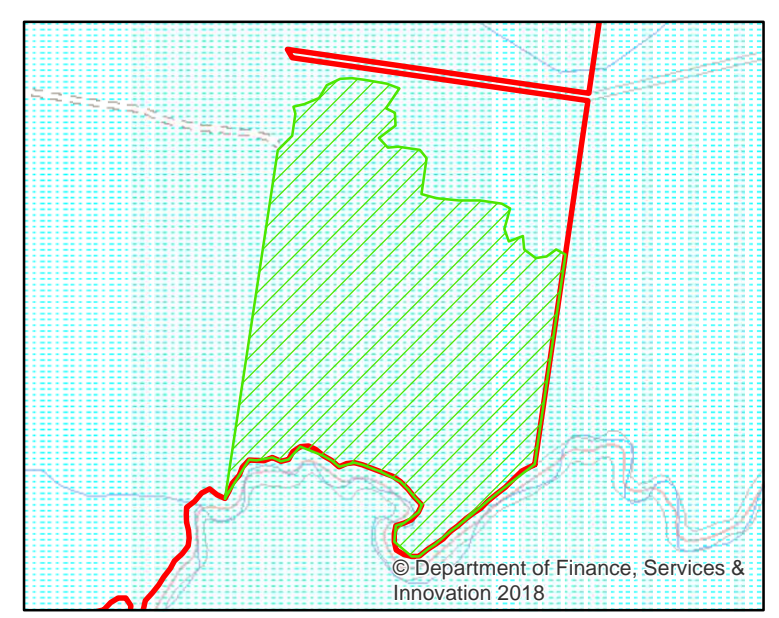
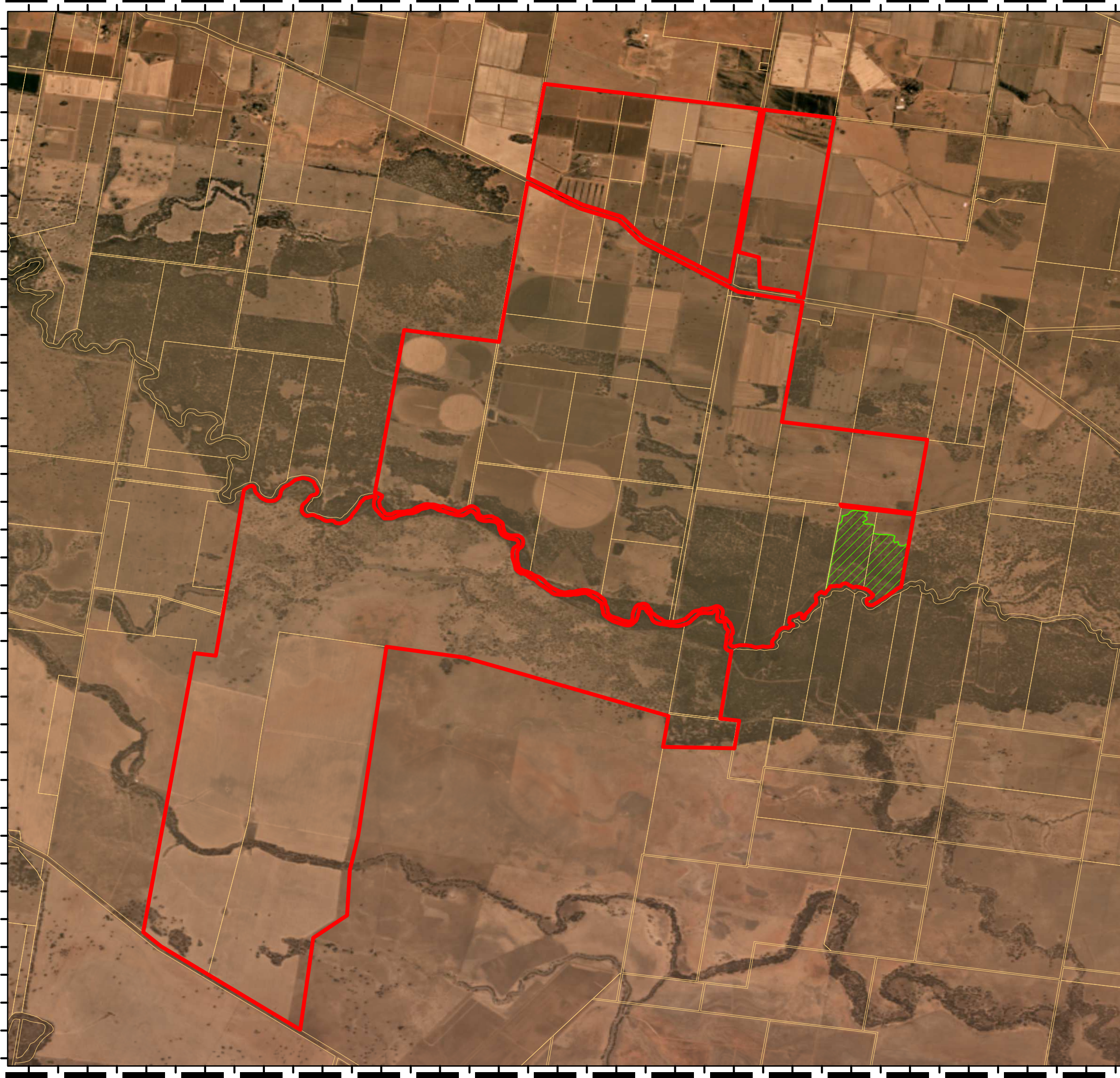
Legend

-  Cadastre
-  Landholding Boundary
-  Remediation Area (69ha)



Datum/Projection: GCS GDA 1994
 Map Ref: Map-1 (Remediation Area)
 Case: 201900351
 Author: [Redacted]
 Date: 19/05/2020

Copyright NSW Department of Planning, Industry and Environment (DPIE). This map is not guaranteed to be free from error or omission. DPIE and its employees disclaim liability for any act done on the information in the map and any consequences of such acts or omissions. Base aerial imagery captured by Land and Property Information NSW. Base cadastral and topographic data supplied by Land and Property Information NSW.


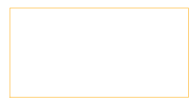
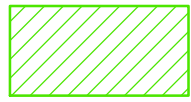


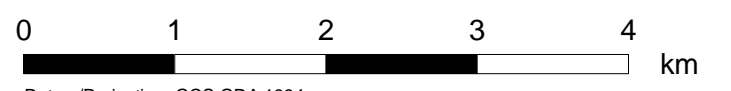
Remediation Order 201900351-1

Attachment-2 (Map-2) Remediation Area

Image Date: 12/2019

Legend

-  Landholding Boundary
-  Cadastre
-  Remediation Area (69ha)



Datum/Projection: GCS GDA 1994
Map Ref: Map-2 (Remediation Area)
Case: 201900351
Author: [Redacted]
Date: 19/05/2020

Copyright NSW Department of Planning, Industry and Environment (DPIE). This map is not guaranteed to be free from error or omission. DPIE and its employees disclaim liability for any act done on the information in the map and any consequences of such acts or omissions.
Base aerial imagery captured by Land and Property Information NSW.
Base cadastral and topographic data supplied by Land and Property Information NSW.