



Remediation Order

ORDER ISSUED TO:

[Redacted]

Reference: DOC23/923982
 Date of issue: 23 October 2023
 CCMS Case: 202102790

By registered post: [Redacted]
 By email: [Redacted]

ORDER TO CARRY OUT REMEDIATION WORK UNDER SECTION 11.15 OF THE BIODIVERSITY CONSERVATION ACT 2016

Background

- A. The Department of Planning and Environment (**'the Department'**) is responsible for the enforcement of the *Biodiversity Conservation Act 2016* (**'BC Act'**), Part 5A of the *Local Land Services Act 2013* (**'LLS Act'**) as well as Regulations under each of these Acts.
- B. Pursuant to section 11.15 of the BC Act, if the Secretary of the Department of Planning and Environment is satisfied at 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 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 of the BC Act).
- D. [Redacted] holds the position of Senior Team Leader of Compliance and Regulation, Southeast within the Department of Planning and Environment.
- E. [Redacted] holds the delegated authority on behalf of the Secretary of the Department of Planning and Environment for the purposes of section 11.15 of the BC Act.
- F. Mr [Redacted] is the current land holder of [Redacted] (**'The Property'**) as listed in Table 1 below (the **Area of Interest** mapped in **Attachment 1**).

Table 1: Land parcels

Lots	Deposited Plan
[Redacted]	[Redacted]
[Redacted]	
[Redacted]	
[Redacted]	

Basis for issuing Remediation Order

- G. The Property is designated on the as Category 2 – Regulated Land as defined by the LLS Act and as supported by a Category Explanation Report obtained from the Map Review Team of the NSW Department of Planning and Environment.

- H. The Department of Planning and Environment is investigating a report of the unauthorised removal of native vegetation from rurally regulated land on the Property, between August 2017 and October 2021.
- I. Under section 60N of the LLS Act it is an offence to clear native vegetation from rurally regulated land.
- J. Furthermore, it is an offence against section 2.2 of the BC Act to pick a plant from a threatened ecological community ('TEC'). Vegetation within the unnamed tributary running north-south which bisects [REDACTED] was assessed to be *Montane Peatlands and Swamps* which has the conservation status of endangered in NSW.
- K. Information and evidence obtained to date including multiple site inspections, formal records of interview, spatial assessment including a review of aerial imagery, a category explanation report and comprehensive desktop assessments indicate that damage occurred at the property to category 2-regulated land comprised of native vegetation. Information and evidence obtained to date also indicates that damage occurred in or as a result of clearing of native vegetation from rurally regulated land contrary to section 60N of the LLS Act and that none of the available defences listed in the Act and associated regulations in relation to the offence apply. Furthermore;
- a. Pursuant to section 13.29 of the BC Act, the *landholder is responsible for activities carried out on the land*. A Land Title Search confirm that [REDACTED] [REDACTED] has owned the land between the above dates when the offence occurred.
 - b. Native vegetation was removed, or 'cleared' predominantly by removal using heavy machinery such as:
 - i. D6 bulldozer and chainsaw; with additional utilisation of fire to *clear*.
 - c. Vegetation at the property is of native composition (consistent with the definition of section 60B of the LLS Act) consisting of various plant community types ('PCT'). These PCT's are mapped as:
 - i. PCT 3643 – *Bungonia Tableland Silvertop Ash-Stringybark Forest*.
 - ii. PCT 3737 – *Bungonia Tableland Scribbly Gum Shrub Forest*;
 - iii. PCT 3932 – *Central and Southern Tableland Swamp Meadow Complex*;
 - iv. PCT 3416 – *Southern Tableland Valley Flats Damp Grassland*; and
 - v. PCT 3347 – *Southern Tableland Creek flat Ribbon Gum Forest*.
 - d. The property and locations where the offence occurred is defined as '*rurally regulated land*', specifically *Category 2 – Regulated* land as per section 60D of the LLS Act. In addition, a *Category Explanation Report* provided by the Environment & Heritage Map Review Team supports that land is Category 2 – Regulated land.
 - e. Additionally, a suitably qualified and experienced ecologist confirms that areas within the unnamed tributary to [REDACTED] are TEC.
- L. The works required by this remediation order provide for the maintenance, restoration and remediation of damaged areas.

Opinion

I, [REDACTED], Senior Team Leader, Southeast Compliance and Regulation ('STL SECR'), am satisfied that the following has been damaged: native vegetation on *Category 2 - Regulated Land* under Part 5A of the LLS Act in or as a result of the commission of an offence against section 60N of the LLS Act.

Order

Pursuant to section 11.15 of the BC Act and under delegation from the Environment Agency Head I, [REDACTED] STL SECR order [REDACTED] (**the Remediator**) to carry out the following remediation work for the duration specified.

Requirements

1. Remediation Areas

- 1.1. In this Order, **Remediation Areas** means the areas marked "Remediation Areas" on **Attachment 2**.
- 1.2. This Order requires the Remediator to inform the Environment Agency Head of any change in the ownership or occupancy of the land concerned at least 21 days prior to any such change occurring.
- 1.3. There are three different Remediation Areas as part of this order which have different conditions and requirements for management.

2. Duration

- 2.1. This Order will be in force for twenty (20) years from the date of issue; unless varied or revoked in accordance with the BC Act.

3. Remediation work

Soil disturbance

- 3.1. Soil disturbance in the Remediation Areas is prohibited, except in accordance with this Order or written approval from the Department.

Remediation

- 3.2. Within **7 days** of being issued this order, and for the duration of this order, for the area titled 'Remediation Area – Type A' vegetation is to be set aside for the purposes of allowing natural maturing of existing vegetation to provide continuous forest for native wildlife. The Remediator must:
 - 3.2.1. **Immediately upon issuance of this order**, abate human disturbance to the Remediation Area except in accordance with written approval of the Department;
 - 3.2.2. Maintain all existing fencing to a standard that excludes stock (no new fences are required so long as stock can be excluded using the existing fences);
 - 3.2.3. If at any time if any exotic species, commercial crop or non-native plant species is found within any 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 as soon as practicable and in any event within 14 days of becoming aware.
 - 3.2.4. Vehicle and heavy machinery use will cease except for along pre-established fire trails and rural tracks;
 - 3.2.5. Not revegetate any exotic species;
 - 3.2.6. Not cultivate; crop or harvest;
 - 3.2.7. Not extract water; and
 - 3.2.8. Construction, development, or land use change must not occur without the written consent of the Department.

- 3.3. **Within 45 days of being issued this order**, and for the duration of this order, for the area titled 'Remediation Area – Type B', The Remediator must allow this area to naturally regenerate to native forest by undertaking the following:
- 3.3.1. Livestock must be excluded;
 - 3.3.2. Cease the use of vehicles and heavy machine except for those under the direction of emergency services;
 - 3.3.3. Not remove dead vegetation;
 - 3.3.4. Not remove native vegetation;
 - 3.3.5. Not cultivate, crop or harvest;
 - 3.3.6. Not extract water; and
 - 3.3.7. Not undertake construction, development or land use change without the written consent of the Department.
 - 3.3.8. If at any time if any exotic species, commercial crop or non-native plant species is found within any 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 as soon as practicable and in any event within 14 days of becoming aware.
- 3.4. **Within 7 days of being issued this order**, and for the duration of this order, for the area titled 'Remediation Area – Type C', the remediator may utilise this for genuine agricultural purposes under the following conditions:
- 3.4.1. The landholder must utilise this area in accordance with the Allowable Activities as prescribed in Schedule 5A of the *Local Land Services Act* (2013);
 - 3.4.1.1. Sustainable grazing is an allowable activity if conducted in line with the Sustainable Grazing Factsheet authored by the Local Land Services.
 - 3.4.2. The regeneration of native vegetation through natural recruitment should occur;
 - 3.4.3. If at any time if any exotic species, commercial crop or non-native plant species is found within any 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 as soon as practicable and in any event within 14 days of becoming aware.

Priority Weed management

- 3.5. The Remediators must implement measures to ensure **exotic flora** do not have a significant impact on the **biodiversity values** of the Remediation Areas.
- 3.6. Without limiting this clause, the Remediators must ensure that exotic flora occupy less than 5% of total groundcover of the Remediation Areas. Control measures permitted include:
- Manual removal;
 - Spot spraying; and
 - Natural control.

Pest animals

- 3.7. The Remediators must implement measures to reduce the density of **exotic animals** to a level that is not having a significant impact on the biodiversity values of the Remediation Areas; and maintain densities at or below that level using any approved means.

Livestock

- 3.8. All livestock must be excluded from both Remediation Area – Type A and Remediation Area – Type B for the duration of this order;
- 3.9. Livestock is permitted within Remediation Area – Type C, however, stocking rates must be at a point where the definition of “*Sustainable Grazing*” is met.

Water extraction

- 3.10. No water is to be extracted from Remediation Area Type A or Type B.

Fencing

- 3.11. For the purpose of excluding stock which will contribute to the rehabilitation and restoration of native vegetation:
 - 3.11.1. fences must be of a standard that excludes all stock from entering it;
 - 3.11.2. any gates in the fence must be constructed of steel with self-closing locks;
 - 3.11.3. all fences must encompass the entire remediation area and meet fences at the start and end point of the fence;
 - 3.11.4. allowable activities for fence lines may be exercised at the property, however, may not occur *beyond minimal extent required* and may not exceed 6 meters from the fixed-point asset as prescribed by Part 4 of Schedule 5A of the *Local Land Services Act (2013)*; and
 - 3.11.5. efforts should be made to not utilise heavy machinery which causes soil disturbance, native vegetation clearing and impacts while installing rural infrastructure.
- 3.12. Newly installed fences will be wildlife friendly, with no use of barbed wire. High-tension plain gauge wire will be of a standard to exclude stock.
- 3.13. Fences are to be maintained to ensure the total exclusion of stock from the Remediation Areas.
- 3.14. The Remediators must erect signage so that any person entering the Remediation Areas is aware; and does not use the land in a manner that would contradict this Order.

Access

- 3.15. The Remediators must provide reasonable access to staff of the Department for the purposes of administering this Order.
- 3.16. The Department must provide reasonable notice of an intention to inspect the Remediation Areas.

Hazards, chemicals and waste

- 3.17. The use of insecticides, herbicides and soil ameliorants is not permitted on the Remediation Areas except as approved in writing by the Department.
- 3.18. Waste is not to be placed, stored or kept in the Remediation Areas.
- 3.19. All staff, contractors and other visitors entering the Remediation Areas are to be made aware of this Order and instructed to comply with its requirements.

Costs

- 3.20. The Remediators must bear all costs associated with implementing the conditions of this Order.

4. Inspections and records

Inspections

- 4.1. The Remediators must inspect the Remediation Areas **once per year**, with a minimum of 366 days between each inspection for the purposes of determining status of vegetation within the area as well as the percentage of ground cover that is comprised of **exotic flora** and priority weeds.
- 4.2. In the Remediation Areas, there are five monitoring points located at the GPS co-ordinates given in **Table 2** and mapped at **Attachment 2**. The co-ordinates given must be permanently marked to ensure the location is the same each monitoring period.

Table 2: Location of monitoring points

Monitoring Point	Latitude	Longitude	Easting	Northing
██████████	██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████	██████████
██████████	██████████	██████████	██████████	██████████

Note: The Remediator may install a star picket, small surveying peg, or wooden stake to locate the same monitoring point between inspections.

Records

- 4.3. The following records must be made by the Remediator for all inspections:
 - The date(s) on which the inspection was undertaken;
 - The name of the person who undertook the inspection;
 - Photographs to the north, east, south and west at each monitoring point;
 - Observations made during the inspection including:
 - Percentage of ground cover comprised of priority weeds;
 - Presence or absence of pest animals in the Remediation Areas;
 - Risk of fire within the Remediation Areas.
 - Details of any remediation work required within the Remediation Areas, including condition targets;
 - The proposed date(s) of that work and time frames for completion.
- 4.4. All records required to be kept by this Order must be:
 - Accurate;
 - In a legible form;
 - Kept for the duration of this Order;
 - Provided to the Department once yearly (by the 30 November each year).

5. Reporting

Annual monitoring report

- 5.1. A Monitoring Report must be submitted to the Department once annually whilst this Remediation Order is in force, by 30 November each year. The Annual Monitoring Report must contain the records made for all inspections (see clause 4.3 and 4.4).

5.2. Reports may be submitted to the Department by:

- Mail, courier, or hand to:

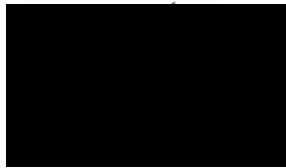
Reference: CCMS Case 202102790
Compliance and Regulation
Biodiversity and Conservation South East
Level 3, Block D, 84 Crown Street
P.O. Box 514
Wollongong NSW 2580

OR

- Email to:

ROG.south@environment.nsw.gov.au

Marked to the attention of "Compliance and Regulation"



Senior Team Leader
South East Compliance and Regulation
Biodiversity and Conservation Division
(by Delegation)

Definitions

In this Order, the following definitions apply:

Term	Definition
Areas of interest	Areas where native vegetation has been cleared
BC Act	<i>Biodiversity Conservation Act 2016</i>
Clearing	Has the same meaning as defined in section 60C of the <i>Local Land Services Act</i>
Damage	Damage has the same meaning as defined in section 11.14 of the <i>Biodiversity Conservation Act 2016</i>
Exotic animals	Includes feral cats, wild dogs, feral pigs, feral goats, feral deer, foxes, hares, rabbits, and other exotic animal species but does not include livestock or native wildlife
Exotic flora	Plant species that are not "native vegetation".
Human disturbance	Activities such as land clearing, land development, interference with or alteration of the environment from its natural equilibrium.
LLS Act	<i>Local Land Services Act 2013</i>
Native vegetation	Has the same meaning as defined in the <i>Local Land Services Act 2013</i> .
Natural control	Refers to any process which may occur naturally, without the aid or assistance of humans
Order	This document – a Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i>
Priority Weed	Has the same definition of Priority Weeds listed in the <i>Biosecurity Act 2015</i> .
Remediation Areas	The areas located on the Property shown schematically on the map in Attachment 2 and marked "Remediation Areas"
Stock	Means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, domesticated pigs and domesticated goats); it does not include native wildlife
Sustainable Grazing	Has the same meaning as defined in the <i>Local Land Services Act 2013</i> .
Waste	Has the same meaning as defined in the <i>Protection of the Environment Operations Act 1997</i>

Information about this Order

Compliance: this order takes immediate effect from the date of issue. 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.

Failure to 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.

Alternatively, the Environment Agency Head (or Delegate) may authorise another person to carry out the work who may then recover the cost from you or any person may seek an order from the NSW Land and Environment Court requiring you to rectify the breach.

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

Variation: This order may be varied or revoked in the same manner in which it was given.

Attachments:

1. Map of the 'Areas of interest';
2. Map of the 'Remediation Areas';
- 3a. Map of the 'Remediation Areas' with annotated areas.
- 3b. Map of the 'Remediation Areas' zoomed into [REDACTED]
- 3c. Map of the 'Remediation Areas' zoomed into [REDACTED]
- 3d. Map of the 'Remediation Areas' zoomed into [REDACTED]



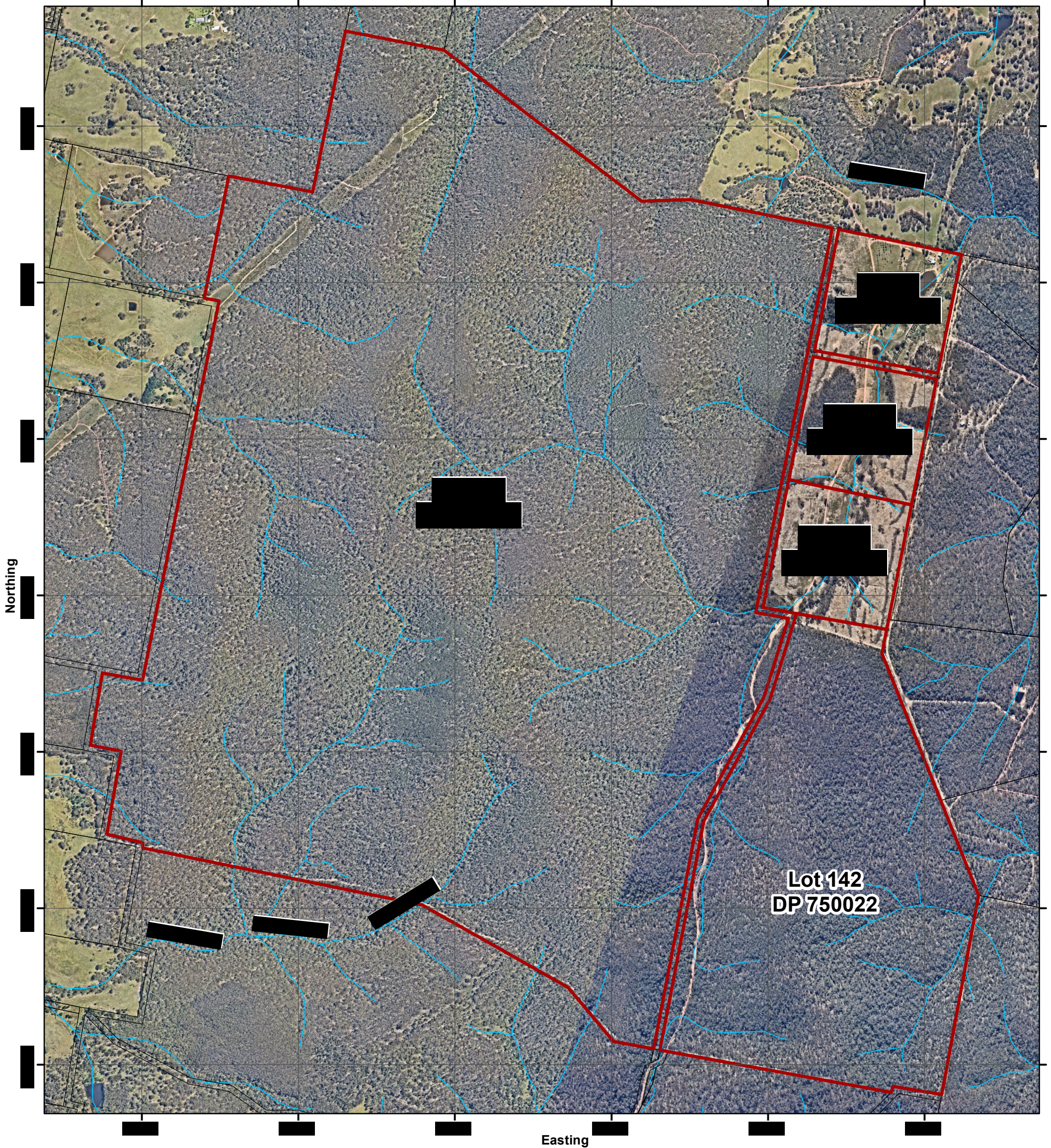
Planning & Environment

Attachment 1: Map of the Property Biodiversity Conservation Act 2016 s11.15 Remediation Order

Property Owner: [REDACTED]
Property Address: [REDACTED]
Lot/DP: [REDACTED]

County: [REDACTED]
Parish: [REDACTED]
LGA: [REDACTED]

Area: 85.94 ha, 859471.74 square m



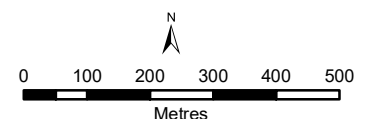
Legend

- The Property
- Lot / Deposited Plan (DP)
- Watercourse

Base imagery captured on the 02.02.2023 includes material © Nearmap.

Base cadastral and topographic data supplied by NSW Department of Customer Service (DCS), Spatial Services.

Responsibility lies with the property owner to confirm the accuracy of information supplied by the NSW Land and Property Management Authority.



Map Scale: 1:12,000

Map Datum/Projection: GDA 94 MGA Zone 55

Date: 4 September 2023

Plan No: S11.15_202102790_A1_V1



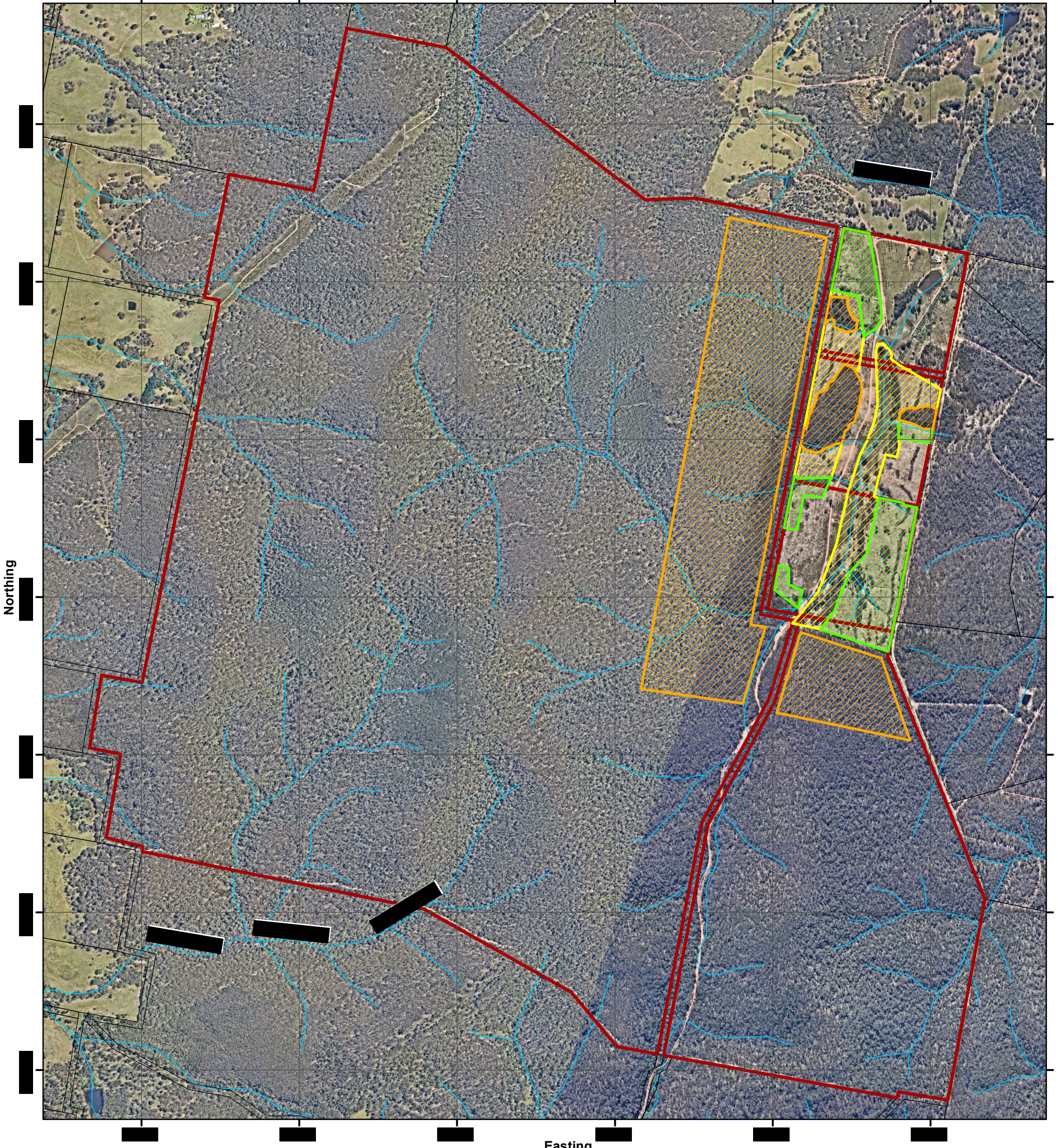
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Attachment 2: Map of the Remediation Areas Biodiversity Conservation Act 2016 s11.15 Remediation Order





Property Owner: [REDACTED]
Property Address: [REDACTED]
Lot/DP: [REDACTED]

County: [REDACTED]
Parish: [REDACTED]
LGA: [REDACTED]

Area: 85.94 ha, 859471.74 square m



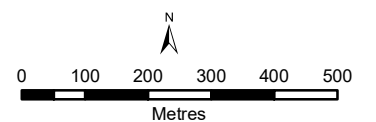
Legend

-  Remediation Area - Type A
-  Remediation Area - Type B
-  Remediation Area - Type C
-  The Property
-  Lot / Deposited Plan (DP)
-  Watercourse

Base imagery captured on the 02.02.2023 includes material © Nearmap.

Base cadastral and topographic data supplied by NSW Department of Customer Service (DCS), Spatial Services.

Responsibility lies with the property owner to confirm the accuracy of information supplied by the NSW Land and Property Management Authority.



Map Scale: 1:12,000

Map Datum/Projection: GDA 94 MGA Zone 55

Date: 4 September 2023

Plan No: S11.15_202102790_A2_V1



Planning & Environment

Attachment 3a: Map of the Remediation Areas Biodiversity Conservation Act 2016 s11.15 Remediation Order



Property Owner: [REDACTED]
Property Address: [REDACTED]
Lot/DP: [REDACTED]

County: [REDACTED]
Parish: [REDACTED]
LGA: [REDACTED]

Area: 85.94 ha, 859471.74 square m



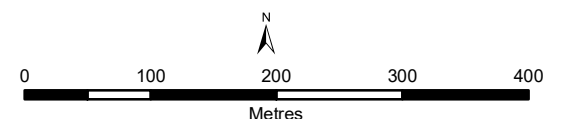
Legend

-  Remediation Area - Type A
-  Remediation Area - Type B
-  Remediation Area - Type C
-  The Property
-  Lot / Deposited Plan (DP)
-  Watercourse
-  Monitoring Points

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Responsibility lies with the property owner to confirm the accuracy of information supplied by the NSW Land and Property Management Authority.



Map Scale: 1:6,000

Map Datum/Projection: GDA 94 MGA Zone 55

Date: 4 September 2023

Plan No: S11.15_202102790_A3a_V1



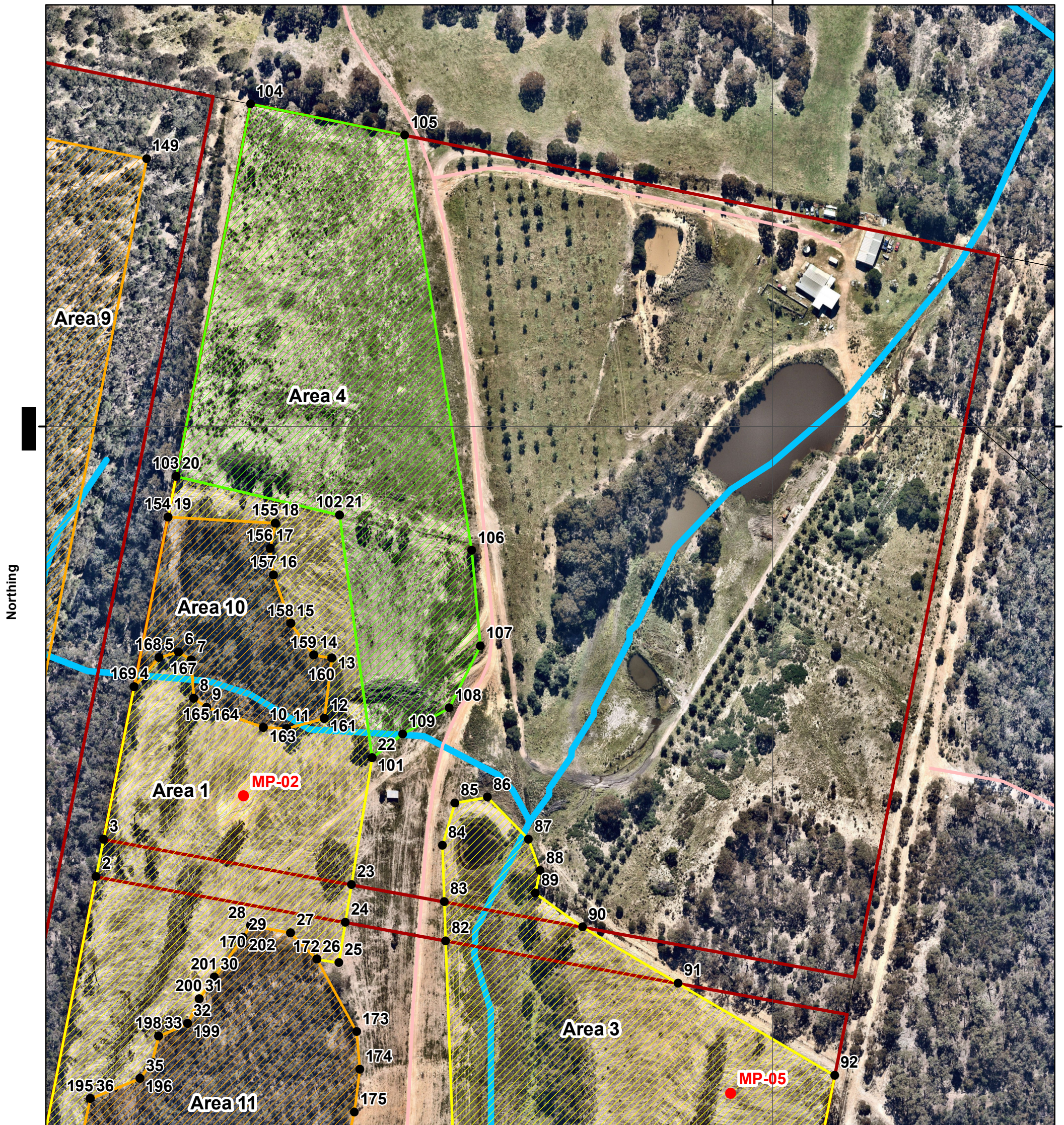
Planning & Environment

Attachment 3b: Map of the Remediation Areas Biodiversity Conservation Act 2016 s11.15 Remediation Order

Property Owner: [REDACTED]
Property Address: [REDACTED]
Lot/DP: [REDACTED]

County: [REDACTED]
Parish: [REDACTED]
LGA: [REDACTED]

Area: 85.94 ha, 859471.74 square m



Legend

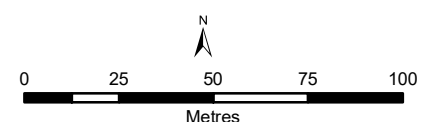
- Remediation Area - Type A
- Remediation Area - Type B
- Remediation Area - Type C
- The Property
- Lot / Deposited Plan (DP)
- Watercourse
- Monitoring Points

Eastings

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Responsibility lies with the property owner to confirm the accuracy of information supplied by the NSW Land and Property Management Authority.



Map Scale: 1:2,000

Map Datum/Projection: GDA 94 MGA Zone 55

Date: 4 September 2023

Plan No: S11.15_202102790_A3b_V1



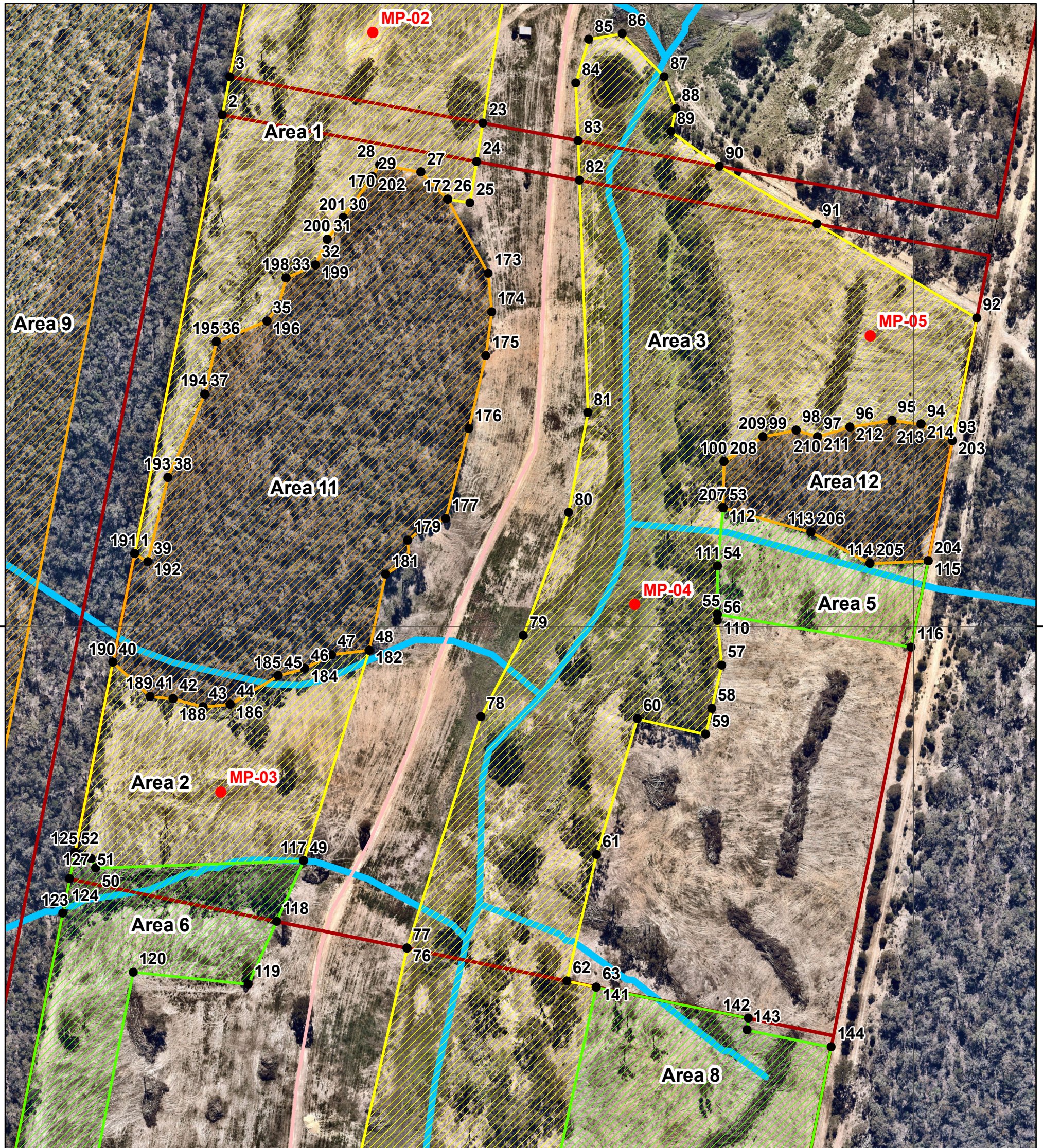
Planning & Environment

Attachment 3c: Map of the Remediation Areas Biodiversity Conservation Act 2016 s11.15 Remediation Order

Property Owner: [Redacted]
Property Address: [Redacted]
Lot/DP: [Redacted]

County: [Redacted]
Parish: [Redacted]
LGA: [Redacted]

Area: 85.94 ha, 859471.74 square m



Legend

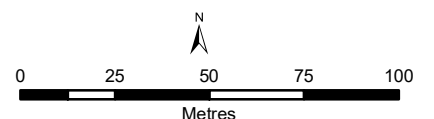
- Remediation Area - Type A
- Remediation Area - Type B
- Remediation Area - Type C
- The Property
- Lot / Deposited Plan (DP)
- Watercourse
- Monitoring Points

Easting

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Responsibility lies with the property owner to confirm the accuracy of information supplied by the NSW Land and Property Management Authority.



Map Scale: 1:2,000

Map Datum/Projection: GDA 94 MGA Zone 55

Date: 4 September 2023

Plan No: S11.15_202102790_A3c_V1



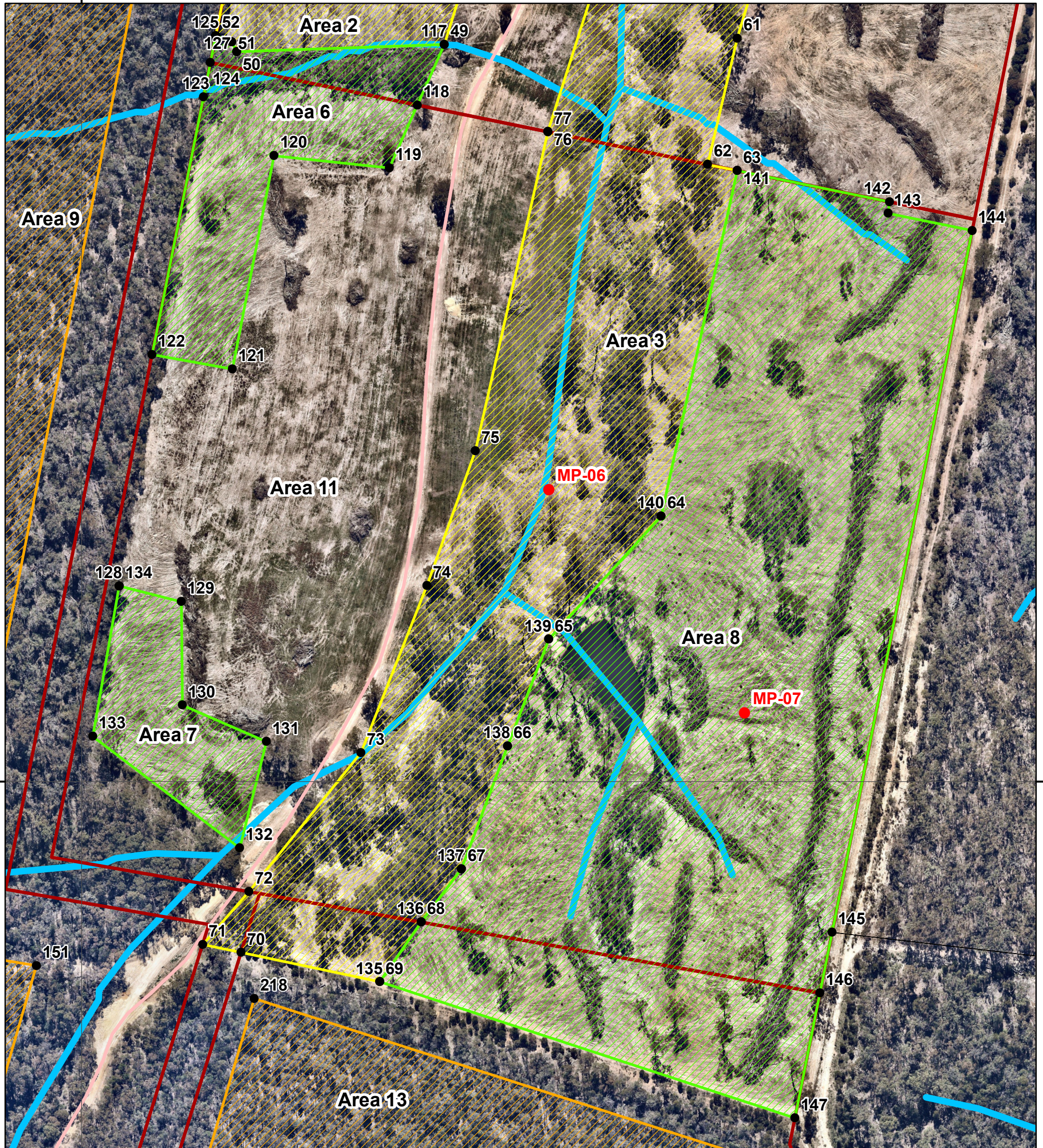
Planning & Environment

Attachment 3d: Map of the Remediation Areas Biodiversity Conservation Act 2016 s11.15 Remediation Order

Property Owner: [REDACTED]
Property Address: [REDACTED]
Lot/DP: [REDACTED]

County: [REDACTED]
Parish: [REDACTED]
LGA: [REDACTED]

Area: 85.94 ha, 859471.74 square m



North

Legend

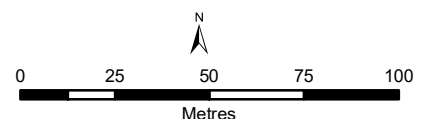
- Remediation Area - Type A
- Remediation Area - Type B
- Remediation Area - Type C
- The Property
- Lot / Deposited Plan (DP)
- Watercourse
- Monitoring Points

Easting

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Base cadastral and topographic data supplied by NSW Department of Customer Service (DCS), Spatial Services.

Responsibility lies with the property owner to confirm the accuracy of information supplied by the NSW Land and Property Management Authority.



Map Scale: 1:2,000

Map Datum/Projection: GDA 94 MGA Zone 55

Date: 4 September 2023

Plan No: S11.15_202102790_A3d_V1