



ORDER ISSUED TO:

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

Document Number: DOC23/486460
CCMS Case Ref. No.: 202304815
Issue Date: 12 July 2024
Property: [REDACTED] ('the Property')

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

BY registered post: RPP44 63900 05100 29944 05609; and

BY email to: [REDACTED]

Date of issue: 12/07/2024

Who are we: The Department of Climate Change, Energy, the Environment and Water ('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.

Why we serve remediation orders: Pursuant to section 11.15 of the BC Act, if the Environment Agency Head (the Secretary of the Climate Change, Energy, the Environment and Water) 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 information on appeals can be found on the NSW Land and Environment Court website <http://www.lec.justice.nsw.gov.au>.

Remediation Order

1. DEPARTMENT OF CLIMATE CHANGE, ENERGY, THE ENVIRONMENT AND WATER OBSERVATIONS

The Department is investigating a report of the unauthorised removal of approximately 23.64 ha of vegetation on the Property between 25 August 2017 and 11 May 2023 (**Attachment A**). This does not consider areas which were impacted prior to 25 August 2017.

Information and evidence obtained to date including a site inspection, ecological assessment and an assessment of spatial imagery confirms that damage occurred to **three** different threatened ecological communities ('TEC') at the property. These TEC's are known as:

- *Swamp Oak Floodplain Forest of the New South Wales South East Corner Bioregion;*
- *Swamp Sclerophyll Forest on Coastal Floodplains of the South East Corner Bioregion;* and
- *Freshwater Wetlands on Coastal Floodplains of the South East Corner Bioregion.*

TEC's are gazetted within Part 2, Schedule 2 of the Biodiversity Conservation Act (2016). The Final Determination issued by the Scientific Committee have all been reviewed for the three TEC's. At all material times, a person must not *pick plants* which comprise of a TEC in contravention of section 2.2 of the BC Act.

In addition, the wetland is habitat to various threatened species within NSW, these species include but are not limited to: Tall knotweed (*Persicaria elatior*), Australasian bittern (*Botaurus poiciloptilus*), Black bittern (*Ixobrychus flavicollis*), Green and Golden Bell Frog (*Litoria aurea*), Waterwheel plant (*Aldrovanda vesiculosa*) and Southern myotis (*Mycotis Macropus*). It is an offence against section 2.4 of the BC Act to knowingly harm a threatened species habitat or threatened ecological community.

The damage caused to TEC's, and threatened species habitat included picking by the removal via use of a tractor with a slasher, and bulldozer or similar equipment. The Department understands that [REDACTED] was the person responsible for the damage and conducted works himself.

A full assessment of lawful defences listed under the BC Act was conducted. No approvals were identified to permit plant picking.

Additional to the plant picking within [REDACTED] it appears that a portion of [REDACTED] Nature Reserve has historically been managed and used as part of the private landholding. National Parks NSW have been liaised with as part of this Remediation Order.

2. REASONS FOR VIEW FORMED

I, [REDACTED], Senior Team Leader of Compliance and Regulation South East, am satisfied that the following has been damaged:

- a) Threatened ecological communities as gazetted under Part 2, Schedule 2 of the BC Act; and
- b) Threatened species habitat (including: Tall knotweed (*Persicaria elatior*), Australasian bittern (*Botaurus poiciloptilus*), Black bittern (*Ixobrychus flavicollis*), Green and Golden Bell Frog (*Litoria aurea*), Waterwheel plant (*Aldrovanda vesiculosa*) and Southern myotis (*Mycotis Macropus*).

in or as a result of, the commission of an offence against section 2.2 of the BC Act. In order to:

- a) maintain, remediate or restore the damaged area, habitat, plant, or vegetation concerned;

I, [REDACTED], Senior Team Leader of Compliance and Regulation (South East), order [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 years from the date of this Order:

[REDACTED] holds delegated authority on behalf of the Environment Agency Head for the purposes of section 11.15 of the BC Act.

Remediation Order

3. REQUIREMENTS – WHAT YOU MUST DO TO COMPLY

In this Order, Remediation Area means the locations identified in **Attachment B**.

This Order must be complied with from the date of the Order for the Term.

3.1 Duration

3.1.1 This Order is in place for fifteen (15) years from the issue date.

3.2 General Requirements

Cease land use activities:

3.2.1 **Immediately upon issue of this order**, soil disturbance within the Remediation Area must cease and is prohibited for the duration of this Order.

3.2.2 **Immediately upon issue of this order** the picking of plants must cease, excluding priority weeds. Standing dead vegetation must remain in place.

3.2.3 **Within 7 days of receiving this order**, all livestock must be removed from the Remediation Area. No livestock is to be within the remediation area for the duration of this Order.

3.2.4 **Within 7 days of receiving this order**, any water extraction from the Remediation Area must cease.

3.2.5 **Within 7 days of receiving this order**, the use of heavy machinery within the Remediation Area is prohibited.

Conduct priority weed management:

3.2.6 **Within 182 days of the issue of this order**, the Remediator must have a suitably qualified and experienced person to prepare a weed management plan. Weed management can be undertaken by the Remediator or, a third party engaged by the Remediator and must be conducted four (4) times yearly for the first 24 months of this Order, and then two (2) times yearly for the remaining duration of this Order.

3.2.6.1 Priority weeds may only be removed by low impact method such as hand removal or spot spraying with a handheld nozzle gun; and

3.2.6.2 It is not permitted to undertake aerial or broadscale/boom spraying (or similar method), nor broadscale indiscriminate slashing or mechanised removal of vegetation.

3.2.6.3 The preparation of this weed management plan and the requirements of this order do not diminish a landholders General Biosecurity Duty relating to priority weeds under the *Biosecurity Act 2015*.

Other actions:

3.2.7 The Department will consider varying or amending this order to reflect any approval issued by the NSW Rural Fire Services, such as a hazard reduction certificate which intersects the Remediation Area.

3.2.8 **Within 14 days of this Order**, you prepare and organise the erection of signage so that any person entering the Remediation Area becomes aware of the Remediation Area.

3.2.9 You must inform all purchasers of the land of this Order.

Remediation Order

3.3 Reporting Requirements

- 3.3.1 **By 30 November 2024** you must submit a completed Annual Monitoring Report for the year of 2023.
- 3.3.2 **By 30 November of every subsequent year this Order is in place** for, you must submit a completed report by 30th November. All reports must be scanned and emailed to rog.south@environment.nsw.gov.au or sent by Registered Post to:

Reference: CCMS 202304815
Senior Team Leader, Compliance and Regulation
Department of Climate Change, Energy, the Environment and Water
PO Box 514
Wollongong NSW 2520

Guidance for annual monitoring report and record keeping:

The following records must be made by the Remediators 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
- Remediation work required; including condition targets and time frames for completion.
- Details of any work required within the Remediation Areas
- The proposed date(s) of that work.

All records required to be kept by this Order must be:

- Accurate
- In a legible form
- Kept for the duration of this Order
- Must be provided to the Department annually.

4. AN EXAMPLE OF HOW YOU CAN COMPLY

One way of achieving compliance with this Order would be to:

1. Remove all stock from the remediation area by 19/07/2024.
2. Provide the Weed Management Plan prepared by a suitably qualified and experienced person to the Department for review and acceptance.
3. Controlling priority weeds by selectively poisoning and manually removing priority weeds 4 times per year for the first 24 months of this order, then 2 times per year for the remainder of this Order.

Remediation Order

4. Prevent human disturbances to the remediation area for the duration of the Order, with the exception of work required for the management of priority weeds.
5. Send in completed monitoring report by the 30/11/2024 and every year thereafter as described in section 3.3.

DEFINITIONS

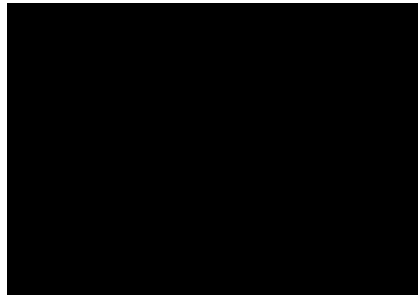
In this Order, the following definitions apply:

Term	Definition
BC Act	Means the <i>Biodiversity Conservation Act 2016</i>
Damage	damage habitat includes damage caused by— (a) removing or relocating any part of the habitat, and (b) activities that prevent the continued use of the habitat by animals.
The Department	The NSW Department of Climate Change, Energy, the Environment and Water.
General Biosecurity Duty	As described by Part 3 of the <i>Biosecurity Act 2015</i> .
Habitat	includes—(a) an area periodically or occasionally occupied by a species or ecological community, and (b) the biotic and abiotic components of an area.
Native vegetation	Has the same meaning as defined in Part 5A of the <i>Local Land Services Act 2013</i>
Order	This document: a Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i>
Pick	a plant includes gather, take, cut, remove from the ground, destroy, poison, crush or injure the plant or any part of the plant.
Plant	means any plant, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens, but does not include marine vegetation.
Remediation Area	Means the areas located on the Property shown schematically on the map in Attachment B as the “Remediation Area” being parts of [REDACTED] and [REDACTED]
Remediators	[REDACTED]
Reporting period	Reporting period Means each annual period from the commencement of this Order
Threatened ecological community	means a critically endangered ecological community, an endangered ecological community or a vulnerable ecological community listed in Schedule 2.
Threatened species	means a critically endangered species, an endangered species or a vulnerable species listed in Schedule 1.
Term	Means 15 (fifteen) years
The Property	Known as [REDACTED] and [REDACTED]. These lots are known as the [REDACTED] Nature Reserve at [REDACTED] and [REDACTED] respectively.
Priority Weed	Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> . This may also include any other weed which is specific to the site identified by the Weed Management Plan.
Suitably qualified and experienced person	A person or company with suitable qualifications and experience to fulfill the requirements of a weed management plan.

Remediation Order

WARNING AND INFORMATION ABOUT THIS ORDER

- If you fail to comply with this Order the Environment Agency Head or his/her 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).
- If you fail to comply with this Order, any person may seek an order from the NSW Land and Environment Court requiring you to rectify that breach of the legislation (section 13.14 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 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 of Climate Change, Energy, the Environment and Water 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 LLS Act (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) under the BC Act or LLS Act. A Remediation Order is separate to any potential enforcement action.



Senior Team Leader
Compliance and Regulation – South East
(by Delegation)

Attachment:

- A. Map of the Property;
- B. Map of the Remediation Area.
- C. Map of the Remediation Area and Monitoring Points.



Attachment A

Property
Biodiversity Conservation Act 2016
s11.15 Remediation Order

Property Owner: [REDACTED]

Property Address: [REDACTED]

Lot/DP: [REDACTED]




County: St Vincent

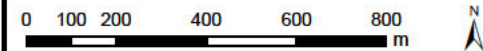
Parish: Tomaga

LGA: Eurobodalla

RO Area: 153.1 ha
1530994.52 sq m

Legend

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

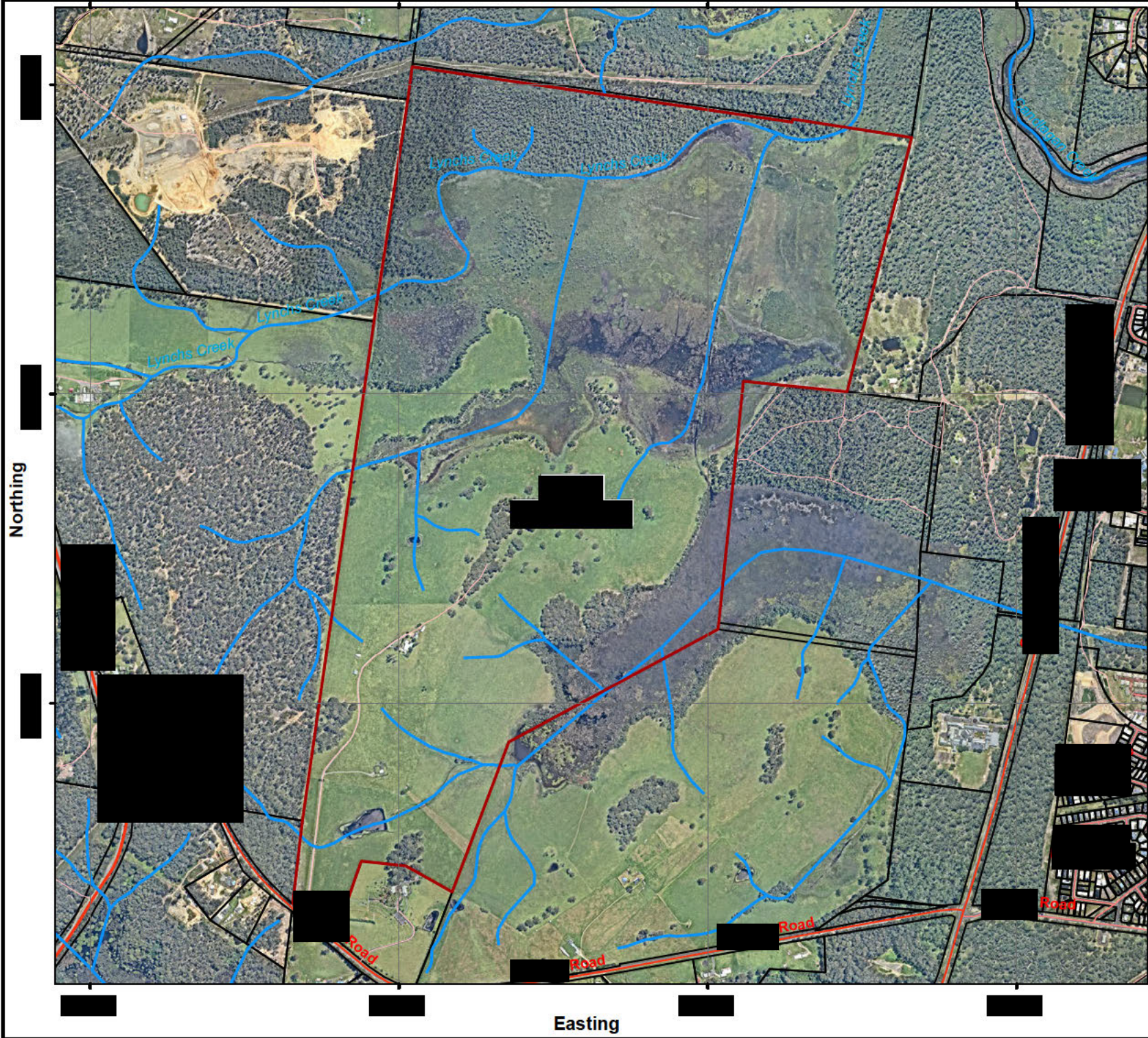


Base imagery captured on the January 2024 includes material © Nearmap.

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 Land and Property Information NSW.

Map Datum/Projection: GDA94 MGA Zone 56
Date: 13 June 2024
Plan No: S11.15_202304815_A1_V1





Attachment B

Remediation Area
Biodiversity Conservation Act 2016
s11.15 Remediation Order

Property Owner: [REDACTED]

Property Address: [REDACTED]

Lot/DP: [REDACTED]





County: St Vincent

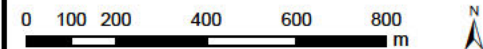
Parish: Tomaga

LGA: Eurobodalla

RO Area: 153.1 ha
1530994.52 sq m

Legend

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

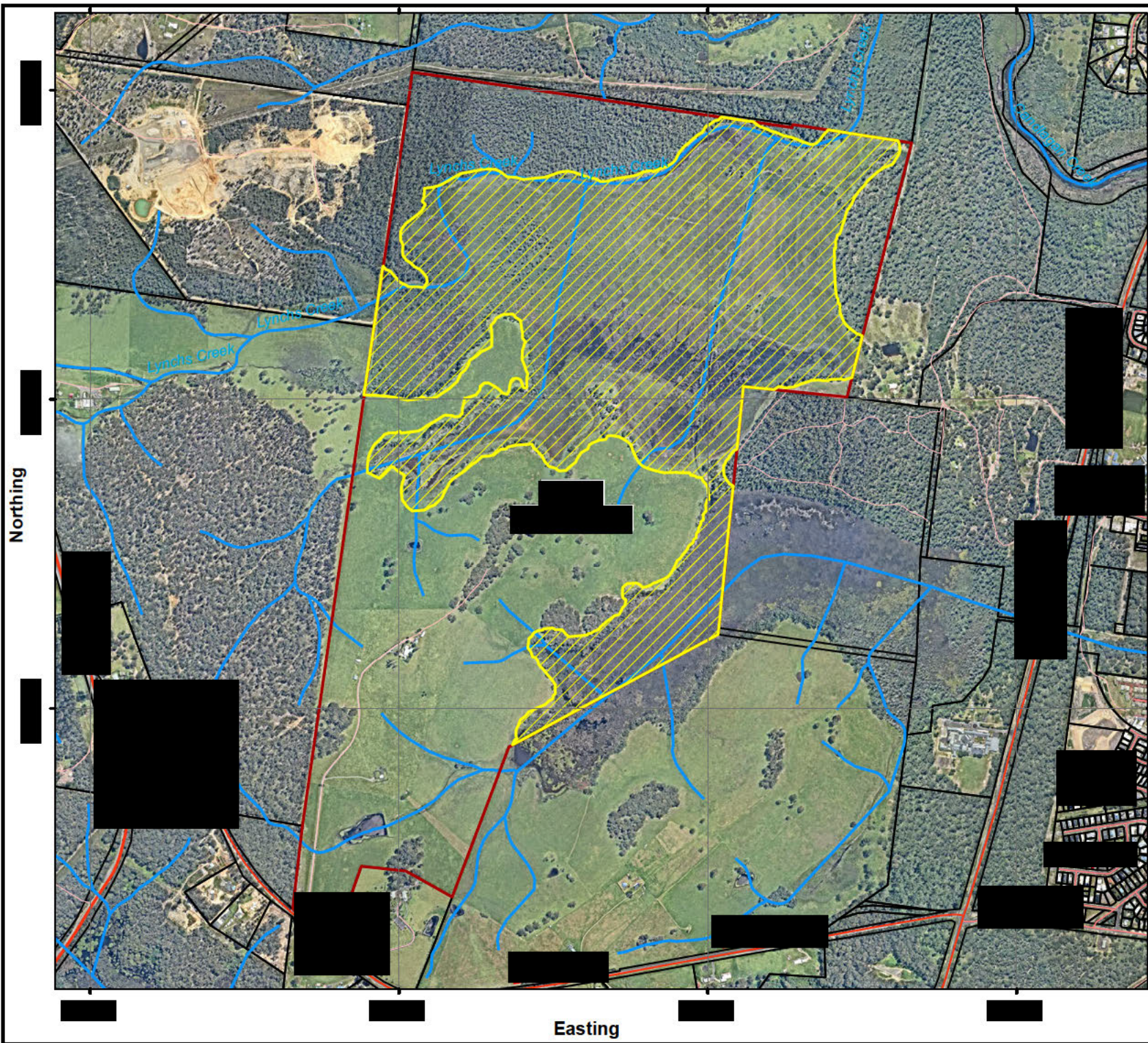


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Map Datum/Projection: GDA94 MGA Zone 56
Date: 13 June 2024
Plan No: S11.15_202304815_A2_V1





Attachment C

Monitoring Points
Biodiversity Conservation Act 2016
s11.15 Remediation Order

Property Owner: [REDACTED]
Property Address: [REDACTED]
Lot/DP: [REDACTED]
County: St Vincent
Parish: Tomaga
LGA: Eurobodalla

RO Area: 153.1 ha
1530994.52 sq m

Legend

-  Remediation Area
-  Monitoring Points
-  The Property
-  Lot / Deposited Plan (DP)
-  Watercourse



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

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Map Datum/Projection: GDA94 MGA Zone 56
Date: 13 June 2024
Plan No: S11.15_202304815_A3_V1

