



[REDACTED]  
[REDACTED]  
[REDACTED]

Notice Number        DOC17/125383  
File number         EF15/9314; SF15/21873  
Date                 10 March 2017

**BY REGISTERED POST**

**DIRECTION TO CARRY OUT REMEDIAL WORK**

**BACKGROUND**

- A. The Office of Environment and Heritage (OEH) has responsibility for the administration and enforcement of the *National Parks and Wildlife Act 1974* (the NPW Act) and associated Regulations.
- B. Mr Richard Kingswood holds the position of A/Director South Coast Branch, National Parks and Wildlife Service within OEH.
- C. The Chief Executive of OEH is empowered to issue remediation directions under section 91K of the NPW Act.
- D. Director South Coast Branch, National Parks and Wildlife Service holds delegated authority on behalf of the Chief Executive of OEH for the purposes of section 91K of the NPW Act.
- E. Budderoo National Park (the Park) is land reserved as national park under the NPW Act.
- F. National Email Directory Pty Ltd ACN 085 387 042 (the Landholder) is the owner of Lot 2 in DP 731833, Parish of Yarrawa, County of Camden, Wingecarribee LGA at 635 Belmore Falls Road ROBERTSON NSW 2577 (the Property).
- G. Mr [REDACTED] and Mrs [REDACTED] are the Directors of the Landholder.
- H. Mr [REDACTED] engaged W. A. Hough Constructions Pty Ltd (trading as Bowral Tree Service) (BTS) to undertake tree removal and mulching at the Property. As part of this process, BTS entered the Park between 12 February 2013 and 6 March 2013.
- I. Mr [REDACTED] engaged Southern Earthworks Pty Ltd (SE) to undertake tree stump removal, movement of rocks and soil, levelling of soil, construction of retaining walls and irrigation works at the Property. As part of this process, SE entered the Park between 27 February 2013 and 19 September 2013.

- J. On 20 June 2013 OEH Officers inspected an area of the Park to the immediate north and north east of the house situated upon the Property. OEH Officers observed that this area (the Remediation Area) had been cleared of vegetation to bare mineral earth and replaced with turf. The Remediation Area was calculated to be about 2600m<sup>2</sup> in size. The Remediation Area also had what appeared to be a new metal post and stainless steel wire cable fence with timber rail erected upon escarpment edge, rock retaining walls that were partially constructed, bench seating, stone steps and cuts in the rock on the escarpment edge where metal grids were placed.
- K. On 22 November 2013 [REDACTED], director of the Landholder, advised OEH that BTS, SE and [REDACTED] undertook clearing within the Remediation Area during February and March 2013 which included landscaping, retaining wall construction, fence construction, installation of bench seating and decking construction at fence line.
- L. On 2 June 2014 Mr [REDACTED], director of SE, advised OEH they had moved soil and rocks around the Remediation Area and stumps of trees that had already been cut down were removed from the Remediation Area at the direction of Mr [REDACTED] from late February 2013 until no later than 19 September 2013.
- M. On 17 October 2014 Mr [REDACTED], director of [REDACTED] Constructions Pty Ltd trading as BTS, advised OEH they had cut down trees and scrub with chainsaws and put it through a wood chipper at the direction of Mr [REDACTED] in February and March 2013.
- N. On 19 September 2014 Registered Surveyor Mr [REDACTED] conducted a survey of the Remediation Area. The survey shows the Remediation Area (marked on the survey as the 'cleared area') is approximately 2600m<sup>2</sup> and lies within the Park. Turf and rocky outcrops exist in the Remediation Area along with several structures such as a rock retaining wall, tiered sandstone retaining wall, and timber and steel cable fence.
- O. An imagery assessment undertaken by OEH, Spatial Analyst, Mr [REDACTED], on 5 February 2016 shows that vegetation was removed from the Remediation Area between 6 February 2013 and 19 December 2013.
- P. A site assessment undertaken by NPWS Project Officer, Mr [REDACTED], on 23 February 2016 shows that natural bushland was removed from the Remediation Area, including total removal of ground vegetation, logs and litter and replaced with an exotic grassland sward containing a very sparse small tree cover and landscaped rockeries containing exotic plants or introduced native plants.
- Q. Information gathered to date, including inspections, examination of satellite and aerial photo images and responses to notices to provide information and records indicate that removal of vegetation and rock in the Remediation Area within the Park commenced on about 12 February 2013 and was undertaken until 19 September 2013. During this period, vegetation was unlawfully removed from the Remediation Area and replaced with turf. Rock was unlawfully removed and rearranged over the area. A timber and steel cable fence, rock retaining wall, bench seating and decking were constructed within the Remediation Area.

- R. OEH considers that the removal of the vegetation, movement of rocks and construction of infrastructure (being a timber and steel cable fence, rock retaining wall, bench seating and decking) has caused damage to the Park for the purposes of section 91K of the NPW Act.
- S. OEH considers Mr [REDACTED] caused or permitted the damage to the Park. OEH considers that the damage occurred in or as a result of the commission of an offence under section 156A of the NPW Act. Section 156A makes it an offence to damage or remove any vegetation, rock, soil, sand, stone or similar substance in or on land reserved under the NPW Act (or cause or permit any such removal or damage).
- T. Neither the Landholder, Mr [REDACTED], BTS or SE sought consent from the Chief Executive of OEH to remove any vegetation or rocks from the Park or cause damage to the Park.
- U. The area marked by the brown hatching on Attachment 1 to this Remediation Direction forms the "Remediation Area".

## OPINION

- V. I, Richard Kingswood, A/Director South Coast Branch, National Parks and Wildlife Service am of the opinion that damage has been caused to the Park as a result of the commission of an offence under section 156A of the NPW Act.

## AIMS OF REMEDIATION

- W. The aim of the Remediation Direction is to:
- Prevent entry to Remediation Area whilst it is regenerating.
  - Undertake assisted regeneration to ensure the Remediation Area is returned to a similar vegetation condition as prior to when the unauthorised works were undertaken.
  - Ensure regeneration of the Remediation Area is weed free.
  - Remove unlawfully installed infrastructure to ensure the Remediation Area is returned to a natural state and is accessible to members of the public.

## DIRECTION TO CARRY OUT REMEDIAL WORKS

- X. I, Richard Kingswood, A/Director South Coast Branch, National Parks and Wildlife Service, in order to remediate and restore the Remediation Area require that Mr [REDACTED] perform the following remediation works on the Remediation Area within the time specified, if any, for each work, or where no time is specified, for a period up to 15 years.

## REMEDICATION WORKS

### 1. EXCLUSION OF REMEDIATION AREA

#### Fencing

- 1.1 Mr [REDACTED] must construct a fence on the boundary of the remediation area by 3 April 2017, as shown by a blue line on the map at Attachment 1 (Fence) to delineate the remediation area, manage and control access to avoid further impacts and prevent vehicle access to the Remediation Area.

- 1.2 The Fence referred to in condition 1.1 must be constructed as follows:
  - a) 5 strand wire of standard size;
  - b) all strands must be constructed of plain wire (not barbed or similar material);
  - c) the bottom strand is to be not less than 15cm above ground level;
  - d) steel posts must be installed every 3 metres;
  - e) sighted as close to the tiered sandstone retaining wall as possible, but not more than 500m out from the base; and
  - f) any gate in the Fence must be constructed of metal with self-closing locks.
- 1.3 Mr [REDACTED] must ensure that the gate in the Fence:
  - a) remain closed at all times; or
  - b) open only to allow access required by this Direction.
- 1.4 If at any time Mr [REDACTED] becomes aware that the Fence does not continue to meet the requirements specified in conditions 1.1, 1.2 and 1.3, Mr [REDACTED] must replace or repair the Fence as soon as practicable to ensure it meets the requirements specified in conditions 1.1, 1.2 and 1.3.
- 1.5 Mr [REDACTED] must inspect the Remediation Area 4 times each Reporting Period, with a minimum of 80 days between each inspection, for the purposes of determining whether the Fence continues to meet the requirements specified in conditions 1.1, 1.2 and 1.3.

### Signage

- 1.6 Mr [REDACTED] must erect 3 signs on the boundary of the Remediation Area by 3 April 2017, as shown by pink circles on the map at Attachment 1 (Sign) to assist in the management and control of access to avoid further impacts to the Remediation Area.
- 1.7 The signs must;
  - a) be displayed between 120cm and 150cm above the ground,
  - b) be positioned to face away from the remediation area so they can be seen on entry, and
  - c) display wording "No access – Vegetation remediation in progress" with the lettering being at least 10 cm high in red font on a contrasting background.
- 1.8 Mr [REDACTED] must inspect the Remediation Area 4 times each reporting period with a minimum of 80 days between each inspection and replace any signs that are missing or have become illegible or until the Area Manager, Highlands, National Parks and Wildlife Service is satisfied that rehabilitation is complete and gives authority for the removal of these structures.

### Preventing entry to the Remediation Area

- 1.9 From 3 April 2017 Mr [REDACTED] must ensure that no vehicles or machinery enter, travel through or remain in the Remediation Area at any time. If Mr [REDACTED] requires any vehicle or machinery to carry out the Directions in the Remediation Direction, Mr [REDACTED] must first obtain permission in writing from the Area Manager, Highlands, National Parks and Wildlife Service.

## 2 REMEDIATION PLAN

### Preparation of Remediation Plan

- 2.1 Mr [REDACTED] must engage a Suitably Qualified Expert to prepare, in consultation with OEH, a remediation plan that contains recommendations in respect of actions to restore the Remediation Area to a similar condition as prior to when vegetation was removed during the period 12 February 2013 to 19 September 2013.
- 2.2 Mr [REDACTED] must ensure that the remediation plan includes:
- A detailed explanation of the method for removing the timber and steel cable fence, decking, stone steps and seating (unlawful infrastructure) from the Remediation Area mapped in Attachment 1 to this notice, the proposed timeframes for removing the unlawful infrastructure and the measures taken to minimise any impacts on the environment in removing the unlawful infrastructure;
  - A detailed explanation of the method for covering the rock retaining wall and the tiered sandstone retaining wall, as shown on Attachment 1, with a medium that allows regeneration and growth of native plant species over these retaining walls. This must include the type of substrate, stabilisation method, control of soil erosion, when works will occur, and on-going management of growing vegetation;
  - A detailed explanation of the method for regeneration of the Remediation Area by a suitably qualified bush regeneration contractor to ensure the Remediation Area is returned to a similar vegetation condition as prior to when vegetation was removed during the period 12 February 2013 to 19 September 2013. This must include number, type, species, spacing and source of plants, direct and indirect seeding components and optional strategic plantings of local native species, when works will occur, proof of purchase, on-going management of plantings and replacement of failed plantings;
  - A detailed explanation of the method of weed control of the Remediation Area by a suitably qualified bush regeneration contractor to ensure the Remediation Area is returned to a similar vegetation condition as prior to when vegetation was removed during the period 12 February 2013 to 19 September 2013. This must include sequential total removal of buffalo grass, control of soil erosion, systematic sweeps and inspections, timing of sweeps and inspections, removal of identified exotic plant species, control methods;
  - A requirement that Mr [REDACTED] comply with any reasonable direction made in writing by OEH with respect to required remedial works during or following an inspection of the Remediation Area;
  - Timeframes and costing;
  - Such other matters as a suitably qualified person thinks suitable to include in the Remediation Plan.
- (Note once the Remediation Plan is received it will be reviewed by OEH and the recommendations will be given effect to by a variation to the Remedial Direction. The variation will include the time by which the works in the Remediation Plan must be completed, and will provide for reporting of that work over the life of the Remediation Plan.)
- 2.3 Mr [REDACTED] must submit the Remediation Plan, in writing, to Mr Graham Bush, Area Manager, Highlands, National Parks and Wildlife Service, OEH by 3 April 2017 for approval.

### 3 RECORDS

- 3.1 The following records must be kept by Mr [REDACTED] in respect of any inspections required by this direction:
- The date(s) on which the inspection was undertaken;
  - The name of the person who undertook the inspection; and
  - The type of inspection undertaken.
- 3.2 The following records must be kept by Mr [REDACTED] in respect of any work undertaken as a result of any inspection(s):
- Details of any required work within the Remediation Area;
  - The name of the person who undertook the work;
  - The date(s) this work was undertaken; and
  - The date on which this work was completed.
- 3.3 The following records must be kept by Mr [REDACTED] in respect of any work undertaken as required by this Direction:
- Details of work undertaken within the Remediation Area;
  - The name of the person who undertook the work;
  - The date(s) this work was undertaken; and
  - The date on which this work was completed.
- 3.4 Mr [REDACTED] must keep a copy of all the records that are required to be made under Direction Number 3.1, 3.2 and 3.3.
- 3.5 All records required to be kept by this notice must be:
- In a legible form, or in a form that can readily be reduced to a legible form;
  - Kept for at least 5 years after the inspection or event to which they relate took place;
  - Produced in a legible form to any authorised officer of OEH who asks to see them; and
  - Be true, accurate and correct.

### 4 REPORTING

- 4.1 Mr [REDACTED] must notify OEH when the Fence and the signs have been constructed in accordance with condition 1.1, 1.2, 1.3, 1.6 and 1.7 of this direction.
- 4.2 Mr [REDACTED] must prepare and submit a report to OEH detailing the Fence construction and sign erection within 14 days of the completion of works. The report must include but not be limited to:
- The date of completion for the Fence in accordance with condition 1.1 and 1.2 of this direction;
  - The total length of Fence constructed and the materials used;
  - The date of erection of the signs in accordance with condition 1.6 and 1.7 of this direction; and
  - Name and contact details of person who constructed the fence and erected the signs.

- 4.3 Mr [REDACTED] must prepare and regularly update an Implementation Report documenting the implementation of the Remediation Plan. Mr [REDACTED] must submit the updated Implementation Report to OEH every six months in the first year following receipt of approval of the Remediation Plan. Each report thereafter must be submitted annually from the date of approval of the Remediation Plan.
- 4.4 The Implementation Report must:
- make reference to the remedial actions detailed in the Remediation Plan;
  - include work sheets for works carried out in accordance with the Remediation Plan;
  - include a summary of the regeneration work or activities undertaken during the Reporting Period to allow the Remediation Area to regenerate in accordance with this Direction; and
  - include determinations of all inspections carried out in accordance with this Direction during the Reporting Period.
- 4.5 Mr [REDACTED] must provide all reports required by this Direction to Graham Bush, Area Manager Highlands, National Parks and Wildlife Service, OEH, 1311 Nowra Road Fitzroy Falls NSW 2577.

## DEFINITIONS

In this direction the following definitions apply:

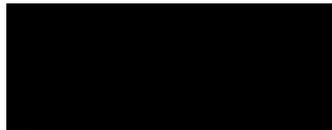
“Landholder”	means National Email Directory Pty Ltd.
“Remediation Area”	means the area of the Park shown schematically on the map in Attachment 1 hatched in brown and marked “Remediation Area”.
“Reporting Period”	means each calendar year commencing from the approval date of the Remediation Plan for the duration of this direction.
“Suitably Qualified Expert”	means a person approved by OEH who has either bush regeneration qualifications or proven ecological restoration skills
“Weed”	means a plant growing in an area where it is not wanted. See: <a href="http://www.dpi.nsw.gov.au/agriculture/pests-weeds/weeds/definition/fags">http://www.dpi.nsw.gov.au/agriculture/pests-weeds/weeds/definition/fags</a>

## WARNING AND INFORMATION ABOUT THIS DIRECTION

- It is an offence against section 91Q of the NPW Act to fail to comply with this Direction. The maximum penalty that a court may impose for this offence is:
  - for a corporation, \$220,000 plus \$22,000 for each day the offence continues and
  - for an individual, \$110,000 plus \$11,000 for each day the offence continues.
- If you fail to comply with this Direction OEH may authorise any other person to carry out the works and may then recover the cost from you (section 91O of the NPW Act).
- This Direction is issued under section 91K of the NPW Act.



- Under section 91K(3) of the NPW Act this Direction may be varied or revoked by a further notice.
- Under section 91T(1) of the NPW Act, if you are aggrieved by the decision to make this Direction you may appeal to the Land and Environment Court within 30 days of this Direction being served on you. However, even if an appeal is lodged, you must comply with this Direction, unless the Court orders otherwise.
- Under section 188E of the NPW Act, your obligation to comply with the requirements of this direction continues until the direction is complied with, even if the due date for compliance is passed.
- OEH may conduct inspections to determine whether this Direction is being complied with.
- Words and expressions have the same meaning as words and expressions used in the NPW Act, except where a word is specifically defined in this Direction.
- A Remediation Direction will not negate the potential for prosecution. A Remediation Direction is separate to any potential prosecution.



..... 10/03/17

**RICHARD KINGSWOOD**  
**A/Director, South Coast Branch**  
**National Parks and Wildlife Service**  
(by Delegation)

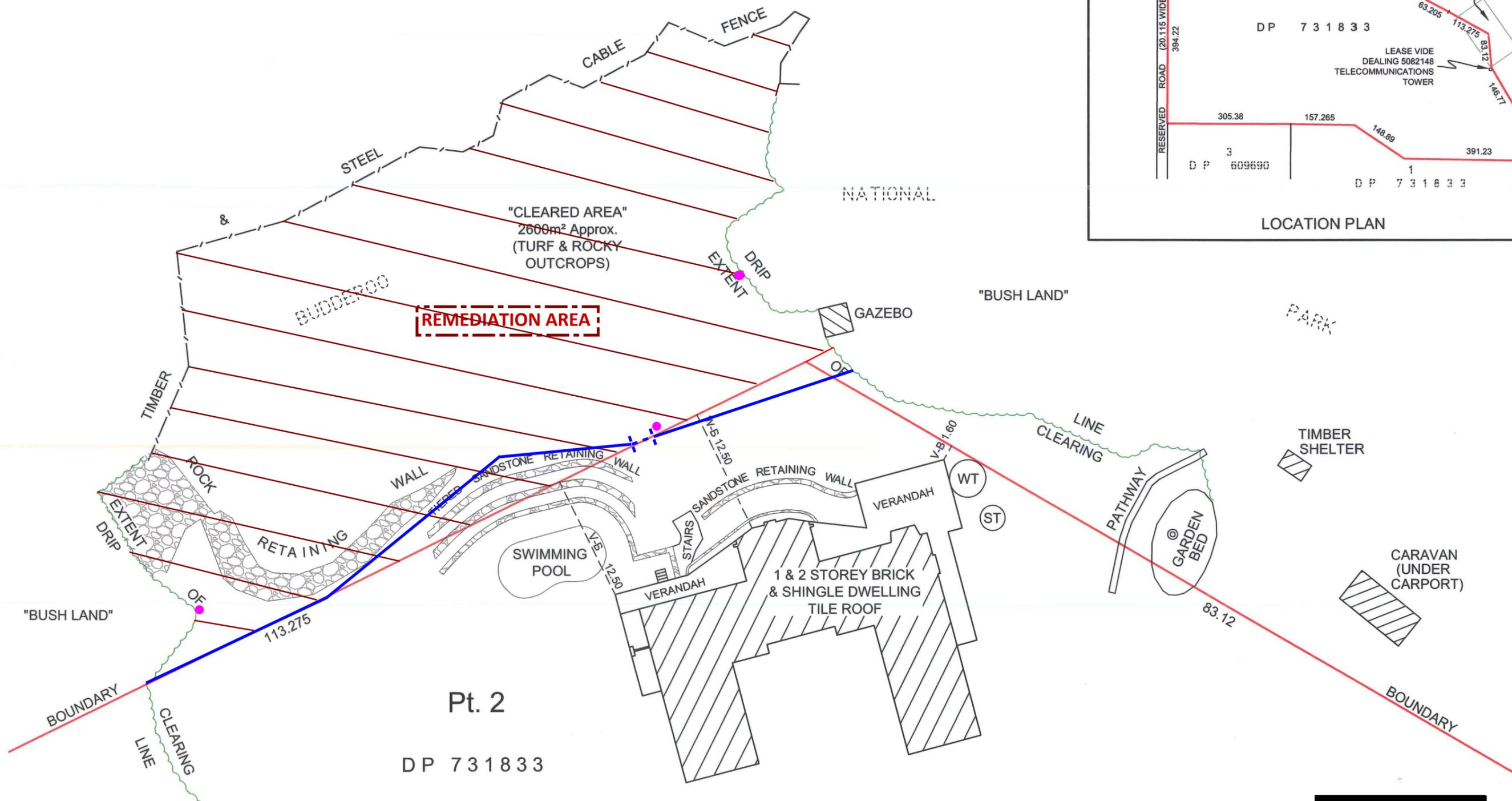
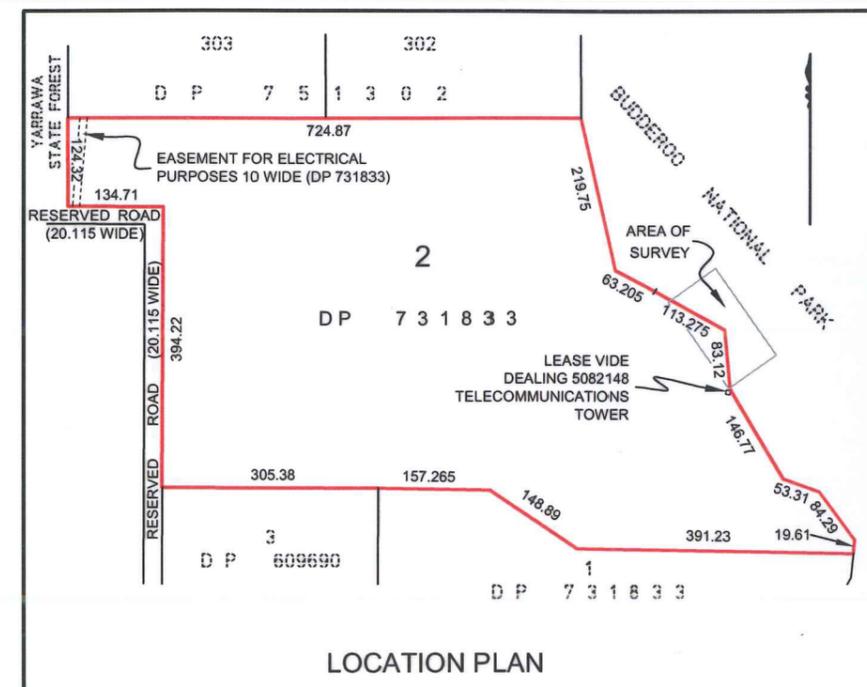
**Attachments:**

1. Map of the Remediation Area

# ATTACHMENT 1 - Map of Remediation Area

SKETCH PLAN No 206259

1:400



Pt. 2  
DP 731833

- LEGEND**
- W-B - WALL OFFSET TO BOUNDARY
  - V-B - VERANDAH OFFSET TO BOUNDARY
  - ST - SEPTIC TANK
  - WT - WATER TANK
  - © - FLAG POLE
  - Fence
  - - - Gate
  - Sign