

Remediation Order



Planning,
Industry &
Environment

[REDACTED]

Notice Number: 00595-1

Our Reference: 2019-00595

Date: 1 November 2019

Contact: [REDACTED]

ORDER TO CARRY OUT REMEDIATION WORK

VARIATION OF REMEDIATION ORDER 10916-2015

PURSUANT TO

S11.15 of the Biodiversity Conservation Act 2016 (NSW)

BACKGROUND

- A. The Department of Planning, Industry and Environment (**the Department**) has responsibility for the enforcement of the now repealed *Native Vegetation Act 2003 (NV Act)*.
- B. The NV Act was repealed on 25 August 2017.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 Parts 7-9 of the NV Act committed before 25 August 2017.
- D. Pursuant to section 11.15 of the BC Act, if the Secretary of the Department is satisfied that damage has occurred in or as a result of the commission of an offence against Parts 7-9 of the NV Act, the Secretary

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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, Biodiversity and Conservation Division, South West Branch within the Department for the purposes of section 11.15 of the BC Act.
- F. [REDACTED] are current joint owners of [REDACTED] (the Property).
- G. [REDACTED] is the previous owner of the Property.
- H. On the 1 February 2018 [REDACTED] was issued a Remediation Order (the Order) number 10916-2015 on [REDACTED] with the land burdened to a Positive Covenant on title for a period of 15 years.
- I. The Order issued to [REDACTED] on 1 February 2018 also included [REDACTED] with no Positive Covenant on title for a period of 15 years.
- J. Pursuant to clause 54 of the BC (S&T) Regulation, the Order issued on 1 February 2018 continues to have effect on [REDACTED] only as it was the only parcel of land burdened with a Positive Covenant on title.
- K. On the 15 February 2019 [REDACTED] sold the Property to [REDACTED]
- L. The purpose of this notice is to vary the Order issued on 1 February 2018 pursuant to section 11.15(4) of the Act.
- M. In accordance with this notice, the Order has been varied to recognise [REDACTED] as the new owners of the Property and therefore the landholders and remediators associated with this Order, vary certain conditions contained within the original Order, and remove [REDACTED] from the Order as it was not included in the Positive Covenant associated with the original Order issued on 1 February 2018.

OPINION

I, Graeme ENDERS, holding the position of Director, Biodiversity and Conservation Division, South West Branch within the Department am satisfied that native vegetation had been cleared on the Property in contravention of the NV Act prior to the current owners purchasing the land from [REDACTED] and the variations to the Order are approved.

DIRECTION TO CARRY OUT REMEDIAL WORKS

- N. In order to:
 - a) repair damage caused by clearing contrary to section 12 of the NV Act 2003 by the previous landholder, [REDACTED] and
 - b) rehabilitate land affected by the clearing contrary to section 12 of the NV Act 2003 by the previous landholder, [REDACTED].

I, Graeme ENDERS, holding the position of Director, Biodiversity and Conservation Division, South West Branch within the Department require that [REDACTED] (the Remediator) perform the following remedial works on the Property for a period of fifteen (15) years from the date the Order was originally issued on the 1 February 2018.

Remediation Order



1. FENCING

- 1.1 The Remediator must construct a fence around the boundary of the Remediation Area as shown on the map at Attachment-1 for the purposes of excluding stock from entering the Remediation Area and to delineate the Remediation Area from the remainder of the Property by 1 December 2019.
- 1.2 Any gates incorporated into the fence around the Remediation Area must also be serviceable and capable of excluding stock from the Remediation Area.
- 1.3 Should areas adjoining the Remediation Area not be stocked the Remediator is not required to construct a fence in accordance with conditions 1.1 and 1.2 until such time as areas adjoining the Remediation Area are stocked.
- 1.4 If a fence is not constructed in accordance with condition 1.3 the Remediator must install non-perishable markers that clearly identify and delineate Remediation Area from the remainder of the Property. Markers must be installed in each corner of the Remediation Area and every fifty (50) metres along the boundary of the Remediation Area.
- 1.5 If at any time the Remediator becomes aware that the fence (including any gates) does not meet the requirements of the conditions outlined in this section, the Remediator must replace or repair the fence (including any gates) as soon as practicable and in any event within fourteen (14) days of becoming aware, to ensure it meets the requirements of the conditions outlined in this section.
- 1.6 The Remediator must inspect the Remediation Area on a regular basis to ensure the fence continues to meet the requirements of the conditions outlined in this section. The Remediator is required to keep records of the dates and times of fence inspections and provide such records each reporting period.

2. STOCK MANAGEMENT

- 2.1 The Remediator can strategically graze stock in the Remediation Area only after having first obtained written approval to do so from the Department, and only for the period and number of stock specified by the Department for that specified period.
- 2.2 Any stock found within the Remediation Area outside of the specified period approved by the Department in writing, must be removed by the Remediator as soon as practicable and in any event within three (3) days of becoming so aware.
- 2.3 If at any time stock is found within the Remediation Area or strategically grazed within the Remediation Area in accordance with condition 2.1, the Remediator must inspect the fence (including any gates) as soon as practicable to determine if it continues to meet the requirements of the conditions outlined in this section 1 of the Order.
- 2.4 The Remediator must inspect the Remediation Area on a regular basis for the purposes of determining if stock is present within the Remediation Area. The Remediator is required to keep records of the dates and times of stock inspections and provide such records each reporting period.

3. WEEDS, EXOTIC SPECIES, COMMERCIAL CROPS, NON-NATIVE PLANT MANAGEMENT

- 3.1 If at any time any weeds, exotic species, commercial crops or non-native plant species are found within the Remediation Area, the Remediator must destroy all such weeds, 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 fourteen (14) days of becoming so aware.

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- 3.2 The Remediator must inspect the Remediation Area on a regular basis for the purposes of determining the presence of weeds, exotic species, commercial crops or non-native plant species within the Remediation Area. The Remediator is required to keep records of the dates and times of stock inspections and provide such records each reporting period.

4. ASSISTED REVEGETATION

- 4.1 Every effort should be taken by the Remediator to allow native vegetation to naturally regenerate within the Remediation Area.
- 4.2 If the regeneration of native vegetation within the Remediation Area is not at a minimum density of 80 tree species per hectare by twelve (12) months after the commencement date of the Remediation Order the Remediator must plant *Eucalyptus populnea* (Bimble Box) and *Callitris columellaris* (White Cypress Pine) tube stock to achieve the minimum density of 80 tree species per hectare (maximum benchmark). If environmental conditions prevent this condition being complied with during the specified period, the Remediator may apply in writing to the Department to negotiate an extension period.
- 4.3 The Remediator can elect to commence replanting at any time prior to the date specified in condition 4.2 to take advantage of favourable environmental conditions, and if the Remediator does not believe maximum benchmark will be achieved by natural regeneration.
- 4.4 If trees are required to be planted by the Remediator in accordance with condition 4.2, the Remediator must:
- (a) Water planted trees as required;
 - (b) Install a tree guard around each planted tree at the time of planting; and
 - (c) Install an organic weed mat, or similar material approved in writing by the Department at the base of each tree planted to suppress weeds around base of planted tube stock.
- 4.5 Any expenses associated with complying with the conditions of this section are to be met by the Remediator.
- 4.6 Any trees planted in accordance with the conditions in this section must be monitored by the Remediator on a regular basis to ensure the planted vegetation is not dead, dying, missing, or damaged. The Remediator is to keep records of any inspections (time and date) and note if any of the planted trees are dead, dying, missing, or damaged.

5. RECORDS

- 5.1 The following records must be kept by the Remediator in respect of any inspections required by this Order:
- a) The date(s) on which the inspection was undertaken;
 - b) The name of the person who undertook the inspection; and
 - c) 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):
- a) Details of any required work within the Remediation Area;
 - b) The date(s) this work was undertaken;
 - c) The name of the person/company/entity who undertook the works; and
 - d) The date on which this work was completed.

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- 5.3 All records required to be kept by this Order must be:
- In a legible form;
 - Kept for at least four (4) years after the inspection or event to which they relate took place;
 - Produced in a legible form to any Authorised Officer of the Department who asks to see them;
and
 - Be true, accurate and correct.

6. REPORTING

- 6.1 The Remediator must prepare and submit an Initial Works Report to the Team Leader Compliance and Regulation:

By Registered Post to:

Compliance and Regulation

NSW Department of Planning, Industry and Environment

PO Box 5336

Wagga Wagga NSW 2650

Or by email to:

compliance.southwest@environment.nsw.gov.au

by no later than fourteen (14) days after 1 December 2019.

- 6.2 The Initial Works Report must be prepared in the format provided at 'Attachment-2: Initial Works Report'.
- 6.3 The Remediator must prepare and submit a Monitoring Report to the Team Leader Compliance and Regulation:

By Registered Post to:

Compliance and Regulation

NSW Department of Planning, Industry and Environment

PO Box 5336

Wagga Wagga NSW 2650

Or by email to:

compliance.southwest@environment.nsw.gov.au

by no later than fourteen (14) days after 1 December 2019 and the 1 December each year thereafter. The Monitoring Report must include but not be limited to:

- A summary of activities undertaken during the reporting period in accordance with this Order;
- Determinations of all inspections carried out in accordance with this Order during the reporting period.

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6.4 The Monitoring Report must be prepared in the format provided at 'Attachment-3: Monitoring Report'.

DEFINITIONS AND INTERPRETATIONS

A. Words and expressions have the same meaning as words and expression used in the *Biodiversity Conservation Act 2016*, except where a word is specifically defined in this Dictionary.

B. In this direction 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.
Landholder/s	Means [REDACTED], joint owners of the Property.
Native Vegetation Legislation	Means the Act and the Regulations under the Act.
Remediation Area	Means the area located on the property shown schematically on the map in Attachment 1 and 2 outlined in red being part of [REDACTED].
Remediator	Means [REDACTED], joint owners of the Property.
Reporting Period	Means each annual period commencing from 1 December 2019 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.
The Act	Means the Biodiversity Conservation Act 2016
Maximum Benchmark	Means 80 tree species per hectare.

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WARNING AND INFORMATION ABOUT THIS ORDER

- It is an offence against section 11.22 of the Act to fail to comply with 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 Secretary of the Department of Planning, Industry and Environment or his/her Delegate may authorise any other person to enter the Property and carry out all of 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 of Planning, Industry and Environment 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.



.....
1/11/19

Graeme ENDERS

Director - South West Branch

Biodiversity and Conservation Division

NSW Department of Planning, Industry and Environment

(by Delegation)

Attachments:

1. Map of the Remediation Area
2. Initial Works Report Template
3. Monitoring Report Template

Remediation Order



ATTACHMENT 1- MAP



[Redacted] - Remediation Order

Biodiversity Conservation Act 2016
Remediation Order under Part 11, Division 4

Property: [Redacted]
Owner: [Redacted]
Remediation Area: [Redacted]
Imagery: ADS40_SC 05-02-2016

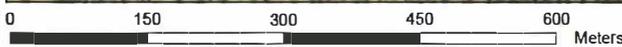
Legend

-  Remediation Area
-  Lot Boundary

The inset map shows the Areas of Remediation in relation to the property boundaries.



This map is not guaranteed to be free from error or omission. The Department of Planning, Industry and Environment 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

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ATTACHMENT 2 - INITIAL WORKS REPORT

LANDHOLDER/S



AS PER REPORTING REQUIREMENTS SET OUT IN THIS REMEDIATION ORDER, THE INITIAL WORKS REPORT MUST BE RECEIVED BY THE DEPARTMENT BY NO LATER THAN FOURTEEN (14) DAYS AFTER 1 December 2019.

Failure to submit this Initial Works Report within fourteen (14) days of the specified date may result in:

- the issue of a Penalty Notice for \$1,320 (individuals) or \$6,600 (corporations);
- OR
- prosecution.

WARNING AND INFORMATION

It is an offence against section 11.22 of the *Biodiversity Conservation Act 2016* to fail to comply with a Remediation 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 \$13,000 for each day the offence continues.

Please submit your completed Initial Works Report:

By Registered Post to:

Compliance and Regulation Unit
Office of Environment and Heritage
PO Box 5336
Wagga Wagga NSW 2650

Or by email to:

Compliance.southwest@environment.nsw.gov.au

Remediation Order



Initial Works Summary

Please provide the following information regarding compliance with the Order issued to [redacted] the owner of [redacted]

The Order relates to the following area of land:
[redacted], 'the Property'.

Please:

- tick (✓) the appropriate box where a question is asked; and
- provide details of activities undertaken; and
- provide dates as appropriate.

Note: The definitions in this Report are the same as in the Order.

FENCING		
What date was construction of the fencing completed?	Date	
If the fence was not constructed by the date specified in condition 1.1 of the Order, please provide an explanation below.		
Has the fencing been constructed according to the requirements of condition 1.1 and 1.2 of the Order? (tick ✓ Yes or No)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If No , provide an explanation below.		
STOCK MANAGEMENT		
Was all stock removed from the Remediation Area by the date specified in condition 2 of the Order? (tick ✓ Yes or No)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If all stock were not removed from the Remediation Area by the date specified in condition 2 of the Order, please provide an explanation below.		

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WEED, EXOTIC SPECIES, COMMERCIAL CROP, NON-NATIVE PLANT MANAGEMENT		
Weed, Exotic Species, Commercial Crop, and Non-Native Plants Have all weeds, exotic species, commercial crops, and non-native plants been removed from within the Remediation Area in accordance with condition 3 of the Order? (tick ✓ Yes or No)	Yes <input type="checkbox"/>	No <input type="checkbox"/>

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Signature and Certification

This Initial Works Report may only be signed by a person(s) with legal authority to sign it as set out in the categories below. **Please tick (✓) the box** next to the category that describes how this Initial Works Report is being signed.

If you are uncertain about who is entitled to sign or which category to tick, please contact the Department.

If the Landholder is:	the Initial Works Report must be signed and certified:
an individual	<input type="checkbox"/> by the individual Landholder
a company	<input type="checkbox"/> by affixing the common seal in accordance with Corporations Act 2001, or
	<input type="checkbox"/> by two (2) Directors, or
	<input type="checkbox"/> by a Director and a company secretary, or
	<input type="checkbox"/> if a proprietary company that has a sole Director who is also the sole company Secretary – by that Director.

I/We declare and certify that the information in this Initial Works Report is true and correct

SIGNATURE: _____

SIGNATURE: _____

NAME:
(printed) _____

NAME:
(printed) _____

POSITION: _____

POSITION: _____

DATE: ____ / ____ / ____

DATE: ____ / ____ / ____

SEAL (if signing under seal)

<p>Please confirm your current contact details:</p> <p>Postal Address:.....</p> <p>Phone Number/s:.....</p> <p>Email:.....</p>

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ATTACHMENT 3 - MONITORING REPORT

LANDHOLDER/S	[REDACTED]
REPORTING PERIOD	.../.../..... to .../.../.....

AS PER REPORTING REQUIREMENTS SET OUT IN THIS REMEDIATION ORDER, THE MONITORING REPORT MUST BE RECEIVED BY THE DEPARTMENT WITHIN FOURTEEN (14) DAYS FROM THE END OF THE REPORTING PERIOD.

Failure to submit this Monitoring Report within fourteen (14) days of the specified date may result in:

- the issue of a Penalty Notice for \$1,320 (individuals) or \$6,600 (corporations);
- OR
- prosecution.

WARNING AND INFORMATION

It is an offence against section 11.22 of the *Biodiversity Conservation Act 2016* to fail to comply with a Remediation 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 \$13,000 for each day the offence continues.

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Or by email to:

Compliance.southwest@environment.nsw.gov.au

Section 11.15 of the *Biodiversity Conservation Act 2016*

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WEED, EXOTIC SPECIES, COMMERCIAL CROP, NON-NATIVE PLANT MANAGEMENT		
<p>Inspections Have inspections for weeds, exotic species, commercial crops, non-native plants, and pest herbivores in the Remediation Area taken place as required by condition 3 of the Order? (tick ✓ Yes or No)</p>	<p>Yes <input type="checkbox"/></p>	<p>No <input type="checkbox"/></p>
<p>Dates of inspections.</p>	<div style="background-color: yellow; height: 20px; width: 100%;"></div> <div style="background-color: yellow; height: 20px; width: 100%;"></div> <div style="background-color: yellow; height: 20px; width: 100%;"></div>	
<p>If there have been no inspections of weeds, exotic species, commercial crops, non-native plants in the Remediation Area, provide an explanation below.</p>		
<div style="background-color: yellow; height: 20px; width: 100%;"></div>		
<p>Were there any weeds, exotic species, commercial crops, non-native plants present within the Remediation Area? (tick ✓ Yes or No)</p>	<p>Yes <input type="checkbox"/></p>	<p>No <input type="checkbox"/></p>
<p>If there were weeds, exotic species, commercial crops, non-native plants present in the Remediation Area describe the species/type present and the extent of their presence.</p>		
<div style="background-color: yellow; height: 20px; width: 100%;"></div>		
<p>Have any weeds, exotic species, commercial crops, non-native plants been removed from the Remediation Area as required by condition 3 of the Oder? (tick ✓ Yes or No)</p>	<p>Yes <input type="checkbox"/></p>	<p>No <input type="checkbox"/></p>
<p><i>Provide details of the method of removal or destruction including dates and the types of weeds, exotic species, commercial crops, non-native plants that have been removed or destroyed.</i></p>	<p><i>Date(s)</i></p>	
<div style="background-color: yellow; height: 20px; width: 100%;"></div>		



Remediation Order

Signature and Certification

This Monitoring Report may only be signed by a person(s) with legal authority to sign it as set out in the categories below. **Please tick (✓) the box** next to the category that describes how this Monitoring Report is being signed.

If you are uncertain about who is entitled to sign or which category to tick, please contact the Department.

The Landholder is:	the Monitoring Report must be signed and certified:
an individual	<input type="checkbox"/> by the individual Landholder
A company	<input type="checkbox"/> by affixing the common seal in accordance with Corporations Act 2001, or
	<input type="checkbox"/> by two (2) Directors, or
	<input type="checkbox"/> by a Director and a company Secretary, or
	<input type="checkbox"/> if a proprietary company that has a sole Director who is also the company Secretary – by that Director.

I/We declare and certify that the information in this Monitoring Report is true and correct

SIGNATURE: _____

SIGNATURE: _____

NAME:
(printed) _____

NAME:
(printed) _____

POSITION: _____

POSITION: _____

DATE: ____ / ____ / ____

DATE: ____ / ____ / ____

SEAL (if signing under seal)

Please confirm your current contact details:

Postal Address:.....

Phone Number/s:.....

Email:.....



[Redacted]

- Remediation Order

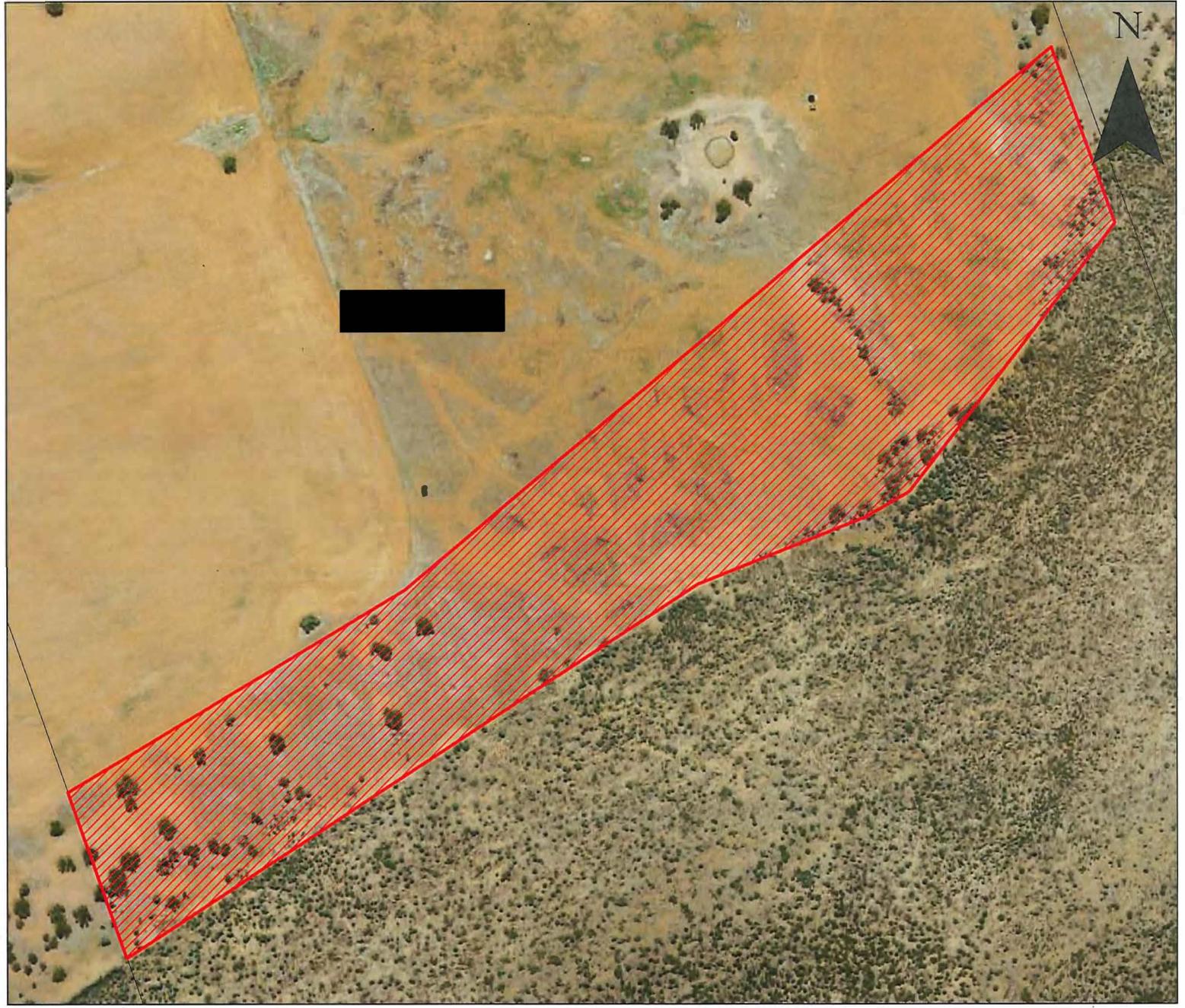
Biodiversity Conservation Act 2016
Remediation Order under Part 11, Division 4

Property: [Redacted]
Owner: [Redacted]
Remediation Area: [Redacted]
Imagery: ADS40_SC 05-02-2016

Legend

-  Remediation Area
-  Lot Boundary

The inset map shows the Areas of Remediation in relation to the property boundaries.



Datum/Projection: GCS GDA 1994

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