

Remediation Order

ORDER ISSUED TO:

[REDACTED]

Order Number: 202204021-1b
Case Reference Number: 202204021
Issue Date: 10/05/2023
Property: [REDACTED]

By: Registered Post.

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

Who we are: The Department of Planning and Environment (the **Department**) has responsibilities regarding the administration and enforcement of the *Biodiversity Conservation Act 2016 (NSW)* (**BC Act**) and its associated Regulations, and responsibilities regarding the enforcement of Part 5A of the *Local Land Services Act 2013 (NSW)* (**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 Department**) 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 you are 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>.

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BACKGROUND

- A. [REDACTED] holds the position of Senior Team Leader Compliance and Regulation, South West Branch, Biodiversity and Conservation Division within the Department.
- B. [REDACTED] holds delegated authority on behalf of the Agency Head of the Department for the purposes of section 11.15 of the BC Act.
- C. [REDACTED] is a joint tenant in common and of the land parcel [REDACTED] (the **Property**) along with [REDACTED] and [REDACTED]
- D. The land parcel [REDACTED] is subject to Land Management Certificate LMC04518 with a Set Aside Management Plan (**SAMP**) issued by Local Land Services (**LLS**). The Certificate confirms that the Area of Interest (**AOI**) is to be set aside in perpetuity for the purpose of managing and conserving native vegetation.
- E. The transitional Native Vegetation Regulatory (**NVR**) Map categorised the **AOI** as Category 2 - Sensitive Regulated land.
- F. The Department conducted an investigation in response to changes in vegetation cover detected by the Department's Early Change Monitoring (**ECM**) Program. The Department's investigation determined that [REDACTED], and [REDACTED] and [REDACTED] cleared a total of 8.6ha of native vegetation on the Property without authorisation between April and September 2022.

BASIS FOR ISSUING REMEDIATION ORDER

- G. The Department's investigation determined [REDACTED], and [REDACTED] and [REDACTED] cleared 8ha of native vegetation on the Property without authorisation between April and September 2022.
- H. Under section 60N of the LLS Act, it is an offence to clear native vegetation on sensitive regulated land.
- I. The AOI is classified as Category-2 Sensitive Regulated Land on the Transitional NVR Map.
- J. The Department's investigation found the clearing was conducted contrary to section 60N of the LLS Act, and none of the available defences listed in the LLS Act and associated Regulations apply.
- K. The works required by this Order provide for the rehabilitation of native vegetation as a result of damage sustained to the AOI by the unauthorised clearing of 8.6ha of native vegetation cleared contrary to section 60N of the LLS Act.
- L. Section 11.16(2) of the BC Act requires you to carry out the remediation work required by this Order.

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OPINION

M. I, [REDACTED], Senior Team Leader Compliance and Regulation, 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 60N of the LLS Act.

ORDER TO CARRY OUT REMEDIATION WORK

N. In order to remediate the unauthorised clearing of 8.6ha of native vegetation on the Property:

I, [REDACTED], Senior Team Leader Compliance and Regulation, South West Branch, Biodiversity and Conservation Division, order [REDACTED], and [REDACTED] and [REDACTED] (the **Remediators**) to carry out the following remediation work on the Property for a **period of fifteen (15) years** with the offer to 'Vary the Term' at 10 years, from the date the Order is issued by the Department (the **Term**).

1 REMEDIATION AREA

- 1.1 In this Order, Remediation Area means the area identified for remediation on the maps at Attachment-1A and 1B of this Order.
- 1.2 The Remediation Area is located within [REDACTED] of the Property.

2 REQUIREMENTS

- 2.1 Within four (4) weeks of the issue date of this Order the Remediators **must** remove all stock from within the Remediation Area. Stock is not permitted within the Remediation Area for the Term of the Order.
- 2.2 Within eight (8) weeks of the issue date of this Order the Remediators **must** commence the removal of all weeds, exotic species, non-native plants, and commercial crops from within the Remediation Area. The Remediators **must** effectively manage the removal of weeds, exotic species, non-native plants, and commercial crops from within the Remediation Area for the Term of the Order. Only selective methods (non-mechanised) of poisoning and/or manual removal are to be used.
- 2.3 Within eight (8) weeks of the issue date of this Order the Remediators **must** commence the removal of all pest herbivore species from within the Remediation Area. The Remediators **must** effectively manage the removal of pest herbivore species within the Remediation Area for the Term of the Order.
- 2.4 Fencing of the Remediation Area is required where areas adjoining the Remediation Area contain stock. If a fence is required, the Remediators **must** construct a fence (including access gates) in the locations identified on Attachment-1A and 1B to enclose the Remediation Area and prevent access by stock within ten (10) weeks of the issue date of this Order.
- 2.5 If a fence is not required, the Remediators **must** install coloured markers post (at intervals of no greater than thirty (30) meters) along the western and northern boundaries of the Remediation Area as shown on Attachment-1A and 1B. Coloured marker posts are to be installed to clearly identify the Remediation Area from other areas of the Property. Marker posts **must** be installed within ten (10) weeks of the issue date of this Order.
- 2.6 It is the Remediators responsibility to ensure all persons accessing the Property are made aware of the area on the Property is protected by this Order.

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- 2.7 No dams, sheds or other rural infrastructure are to be constructed within the Remediation Area during the Term of the Order unless pre-approved in writing by the Department.
- 2.8 The Remediators must allow three years of natural regeneration to occur in the Remediation Area and monitor presence and density of native species. Where native vegetation has not regenerated to represent the Plant Community Type (**PCT**) associated with the adjoining LLS Set Aside area within the three-year period, supplementary planting of native vegetation tube-stock **must** occur. The appropriate PCT species and densities **must** meet the requirements of the LLS SAMP to ensure the successful regeneration of the Remediation Area.
- 2.9 The following activities are **prohibited** within the Remediation Area unless pre-approved in writing by the Department:
- Soil disturbance (including cultivation),
 - Clearing of any native vegetation,
 - Grazing,
 - Removal of fallen timber,
 - Aerial or boom spraying, and
 - Storage of waste or rubbish.
- 2.10 The Remediators **must** ensure no surface drainage into, nor run-off or chemical contamination of the Remediation Area as a result of ground or aerial spray application occurs.
- 2.11 The Remediators is responsible for all costs associated with implementing and complying with the conditions of this Order.
- 2.12 The Order will remain in force for the Term of the Order unless, amended, revoked, or varied by the Department.
- 2.13 The Remediators **must** provide reasonable access to staff of the Department for the purposes of administering this Order which includes providing access to inspect the Remediation Area as required.

3 MONITORING AND REPORTING

- 3.1 The Remediators **must** notify the Department when the initial works associated with the Order have been completed. The Remediators **must** complete and submit the Initial Works Report (**IWR**) template provided by the Department at Attachment-2 of this Order. The Remediators **must** submit the IWR to the Team Leader Compliance and Regulation – South West within twelve (12) weeks from the date of issue of this Order.
- 3.2 The Remediators **must** regularly inspect the Remediation Area and in any case at least four (4) times per calendar year for the purposes of determining:
- The presence of weeds, exotic species, non-native plants, and commercial crops within the Remediation Area,
 - The presence of pest herbivores within the Remediation Area,
 - The presence and impact of stock within the Remediation Area,
 - The effective recovery and regeneration of native plant species within the Remediation Area,
 - The condition and serviceability of fencing or marker posts, and
 - Whether any prohibited activities have occurred within the Remediation Area.
- 3.3 The Remediators will be issued an Annual Monitoring Report each year for the Term of the Order by the Department which **must** be completed by the Remediators and submitted to the Team Leader Compliance and Regulation, South West Branch within the

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time specified on the Annual Monitoring Report issued by the Department.
An example of the Annual Monitoring Report that will be provided by the Department is provided at Attachment-3 of this Order.

- 3.4 The Remediators **must** inform any future purchasers of the land, of this Order.
- 3.5 The Remediators **must** notify the Team Leader Compliance and Regulation - South West within fourteen (14) days if you intend on selling the land subject to this Order.
- 3.6 At any time should the Remediators need clarification or explanation of the requirements and obligations associated with this Order, the Remediators should contact the Team Leader Compliance and Regulation - South West.
- 3.7 The Remediators **must** submit all reports and correspondence relating to this Order to the Team Leader Compliance and Regulation - South West:
- a) By Registered Post to:
 - Team Leader Compliance and Regulation – South West
 - NSW Department of Planning and Environment
 - PO Box 5336
 - Wagga Wagga NSW 2650
 - or
 - b) By email to: compliance.southwest@environment.nsw.gov.au

4 RECORD KEEPING

- 4.1 The Remediators **must** retain copies of all records associated with this Order for the Term of the Order. All records are to be true, accurate, correct and in legible form.

5 DEFINITIONS

In this Order, the following definitions apply:

Term	Definition
BC Act	The <i>Biodiversity Conservation Act 2016</i> .
The Department	The NSW Department of Planning and Environment.
Exotic species or Non-Native 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.
LLS Act	The <i>Local Land Services Act 2013</i> .
Native vegetation	Has the same meaning as defined in Part 5A of the <i>Local Land Services Act 2013</i> .

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Order	Means this document: A Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i> .
Plant Community Type	PCTs are the master community-level typology used in NSW planning and assessment tools and vegetation mapping and management programs.
Pest herbivores	Means hares, rabbits, and goats but does not include livestock.
Remediator/s	Means the person/s named in this Order and who is responsible for adhering to and complying with the Order.
Remediation Area	Means the areas shown on the attached maps to this Order and located within the parcels of land identified by this Order.
Reporting Period	Means each annual reporting period (1 July to 30 June) from the commencement of this Order and for the Term of this Order.
Set Aside	Land comprising an offset under a Property Vegetation Plan or set aside under a code
Set Aside Management Plan	The landholder of land on which the set aside has been established must make reasonable efforts to manage the set aside area in a manner expected to promote vegetation integrity in the set aside area;
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 duration of the Order from the date of issue.
The Property	Means the land parcels identified in this Order that are subject to the conditions of the Order.
Weed	Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> .

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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 Agency Head 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 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.



Senior Team Leader Compliance and Regulation
Biodiversity and Conservation Division-South West
NSW Department of Planning and Environment
(by Delegation)

Attachments to Order:

Remediation Order

1. 1A and 1B (Remediation Area Maps)
2. Initial Work Report (Template)
3. Annual Monitoring Report (Example)



Legend

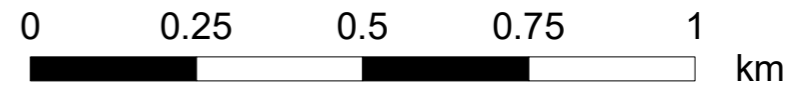
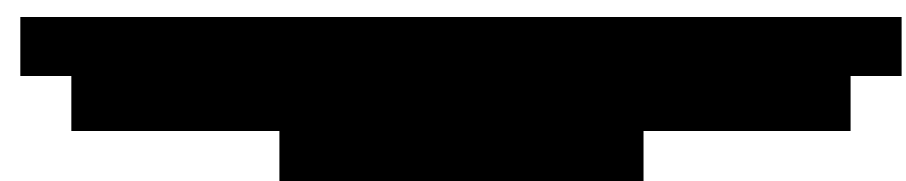
— Fence line

Remediation Area

▨ Maximum 30 metre fence line infrastructure buffer

▨ Remediation Area

▭ Lot Boundary

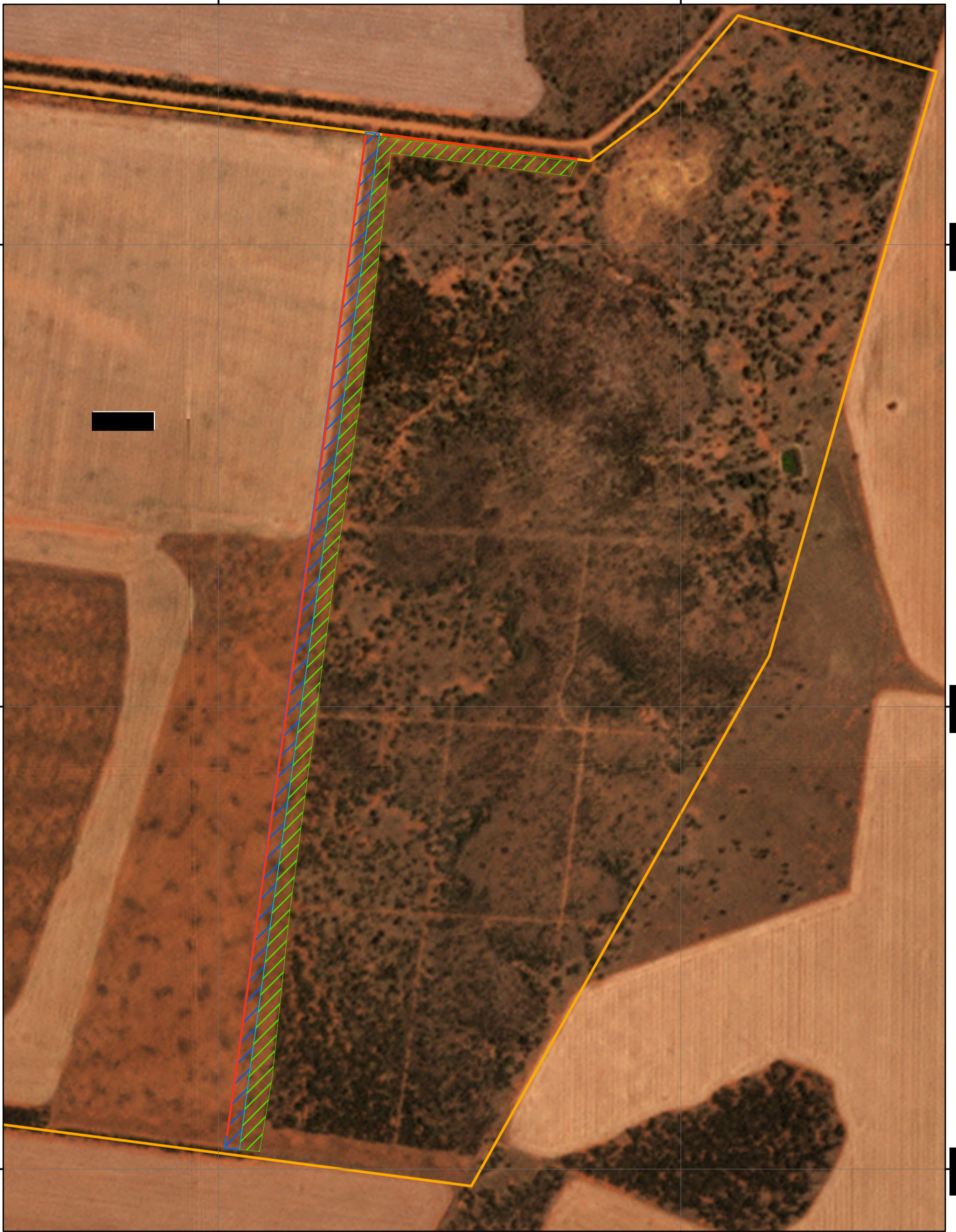


Datum/Projection: GCS GDA 1994



Image: Planet January 2023

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Legend

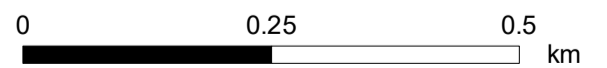
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