

Remediation Order



ORDER ISSUED TO:

[REDACTED]
[REDACTED]
[REDACTED]

Reference: DOC23/975320
Case: 202204483
Date of issue: 12 November 2024

BY: Registered post RPP44 63900 05100 34783 80603 and;
Email [REDACTED]

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

Background

- A. 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) (BC Act)* and its associated Regulations, and responsibilities regarding the enforcement of Part 5A of the *Local Land Services Act 2013 (NSW) (LLS Act)* as well as Regulations under that Act.
- B. At all material times, it was an offence against section 60N under Part 5A of the LLS Act for a person to clear native vegetation in a regulated rural area, except in accordance with:
- an allowable activity authorised under Division 4 and Schedule 5A
 - authorisation under a land management (native vegetation) code under Division 5
 - authorisation by an approval of the Native Vegetation Panel under Division 6
 - authorisation under section 60O (clearing authorised under other legislation)
 - operation authorised under Part 5B (Private Native Forestry).
- C. Pursuant to section 11.15 of the BC Act, if the Environment Agency Head is satisfied that any 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.
- D. [REDACTED] holds the position of Senior Team Leader, Compliance and Regulation North West (STL CRNW), Biodiversity and Conservation with the Department and holds delegated authority on behalf of the Environment Agency Head for the purposes of section 11.15 of the BC Act.
- E. [REDACTED] and [REDACTED] are the registered owners of [REDACTED] [REDACTED] (the Property) within the Moree Plains Local Government Area. The Property comprises part Lots [REDACTED] and [REDACTED] on [REDACTED].

██████████ and ██████████ are joint owners of Lot ██████ in ██████████ and ██████
██████████ is the sole owner of Lot ██████ in ██████████ as listed in the Area of Interest
mapped in **Attachment A**.

- F. Pursuant to section 11.17 of the BC Act, a remediation order may be given to the owner/s of any land on which the damage concerned occurred.

Basis for issuing Remediation Order

- G. The Area of Interest mapped at **Attachment A** is assessed against the current Native Vegetation Regulatory map and marked as category 2 – regulated rural land.
- H. Information and evidence obtained to date, including an assessment of aerial/satellite imagery and a vegetation assessment, supports that damage, caused by the clearing of 38 hectares of native vegetation (the Area of Interest mapped at **Attachment A**) occurred on the Property between November 2022 and March 2023.
- I. The Department has investigated the clearing and concluded that 33 hectares of native vegetation in the Area of Interest has been cleared without any of the available defences and exclusions listed in the native vegetation legislation applying to the clearing.
- J. The works required by this Order provides for the remediation and restoration of 21 hectares of unlawfully cleared native vegetation from the Property.

Opinion

I, ██████████, STL CRNW, am satisfied that native vegetation has been cleared without authorisation on the Property (being the Area of interest mapped at **Attachment A**, which is in a regulated rural area) 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, ██████████, STL CRNW, order ██████████ (the **Remediator**) to carry out the below remediation work within the time specified (if any) for each work, or where no time is specified, for the duration that this Order is in force.

Remediation Work Requirements

1. Remediation Areas

- 1.1 In this Order, **Remediation Area** means the area of land marked as ‘Remediation Area’ on **Attachment B**.
- 1.2 The Remediator must notify the Environment Agency Head within seven (7) days of exchanging contracts for the sale of the land that is subject to this Order.
- 1.3 The Remediator must inform the Environment Agency Head of any change in the ownership or occupancy of the land concerned as soon as reasonably practicable after becoming aware of the change, and in any event within seven (7) days of becoming so aware.
- 1.4 For the duration that this Order is in force, the Remediator must inform all purchasers of the land of this Order.

- 1.5 All staff, contractors, and other visitors entering the Remediation Area are to be made aware of this Order and instructed to comply with its requirements.
- 1.6 The Remediator must ensure all people entering the Remediation Area do not use the land in a manner that would contradict this Order.

2. Duration

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

3. General Requirements

- 3.1 Native vegetation is to be allowed to regenerate in the Remediation Area. To protect regenerating vegetation and fauna habitat, the following activities are prohibited within the Remediation Area:
 - Clearing of native vegetation, including clearing for allowable activities – except with express written prior approval from the Department
 - Removal of fallen timber
 - Grazing of stock
 - Cultivation
 - Construction of infrastructure
 - Aerial spraying.
- 3.2 Within sixty (60) days of issuance of this Order, the Remediator must engage a suitably qualified ecologist to provide expert scientific knowledge in rehabilitating the Remediation Area and to prepare a written initial condition report and remediation plan for the Remediation Area (as set out further below at requirement 5.1). The ecologist must be accredited in the Biodiversity Assessment Method. The Accredited Assessor Public Register of ecologists accredited under section 6.10 of the *Biodiversity Conservation Act 2016 (BC Act)* is available here: <https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>
- 3.3 Within seven (7) days of an ecologist being engaged, notification must be made to the Department that the ecologist has been engaged and provide details of the ecologist's full name and qualifications.

Soil disturbance

- 3.4 Soil disturbance in the Remediation Area is prohibited, except in accordance with prior written approval from the Department.

Weed management

- 3.5 Within sixty (60) days of issue of this Order, the Remediator must implement measures to ensure **exotic flora** do not have a significant impact on the biodiversity values of the Remediation Area.
- 3.6 Without limiting the requirement at 3.5, the Remediator must ensure that exotic flora occupy less than 5% of total groundcover of the Remediation Area. Control measures permitted include:
 - Spot application of herbicide

- Manual removal
- Biological control.

Pest animals

- 3.7 Within sixty (60) days of issue of this Order, the Remediator must implement measures to reduce the density of **exotic animals** to a level that does not have a significant impact on the biodiversity values of the Remediation Area and maintain densities at or below that level using any approved means.

Livestock

- 3.8 Within thirty (30) days of issuance of this Order, the Remediator must remove all stock from the Remediation Area and take measures to prevent stock from entering the Remediation Area for the duration the Order is in force.
- 3.9 Any stock found within the Remediation Area after thirty (30) days from the date of issue of the Order must be removed by the Remediator as soon as practicable and in any event within three (3) days of becoming so aware.
- 3.10 If at any time stock are found within the Remediation Area, the Remediator must review the measures taken to prevent stock from entering the Remediation Area, including fencing requirements 3.14 and 3.15, to determine whether or not they continue to meet the requirements as specified and take all measures necessary to prevent stock from entering the Remediation Area.
- 3.11 No grazing of stock will be permitted in the Remediation Area.

Fencing and Signage

- 3.12 Within thirty (30) days of issuance of this Order, the Remediator must erect fences and continually maintain them to ensure the exclusion of stock from the Remediation Area, where necessary.
- 3.13 If the Remediator wishes to continue grazing rights within the land outside the Remediation Area, the boundaries of the defined Remediation Area must be fenced to a standard that excludes stock.
- 3.14 Within sixty (60) days of issuance of this Order if the perimeter of the Remediation Area is not fenced, the Remediator must install clearly identifiable coloured marker posts along the perimeter of the Remediation Area at intervals no greater than thirty (30) metres for the purpose of clearly identifying the Remediation Area from other areas of the Property.
- 3.15 Within sixty (60) days of issuance of this Order, the Remediators must erect signage so any person entering the Remediation Areas becomes aware of the Remediation Areas and does not use the land in a manner that would contradict this Order. This signage must be spaced at thirty (30) metre intervals and replaced, if found to be damaged or removed, for the duration of this Order.

Access

- 3.16 The Remediator 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.

Hazards, chemicals and waste

- 3.17 The broad use of insecticides, herbicides, and soil ameliorants is not permitted on the Remediation Area except as approved in writing by the Department (refer 3.6).
- 3.18 Waste is not to be placed, stored or kept in the Remediation Area.

Costs

- 3.19 The Remediator must bear all costs associated with implementing and complying with the conditions of this Order.

4 Inspections and records

Inspections

- 4.1 The Remediator must inspect the Remediation Area twice each annual reporting period (that commences from the date of issue) with a minimum of 150 days between each inspection for the purposes of determining the percentage of ground cover that is comprised of exotic flora and priority weeds.
- 4.2 In the Remediation Area, there are two (2) monitoring points located at the GPS co-ordinates given in Table 1 and mapped at Attachment B. The co-ordinates given must be permanently marked to ensure the location is the same each monitoring period.

Table 1: Location of monitoring points

Monitoring Point	Latitude	Longitude	Easting	Northing
Monitoring Point 1	████████	████████	██████	██████
Monitoring Point 2	██████	████████	██████	██████

Records

- 4.3 The following records must be made by the Remediator for all inspections:
- The date(s) on which the inspections were undertaken
 - The name of the person who undertook the inspections
 - Photographs to the north, east, south and west at each monitoring point
 - Observations made during the inspection including:
 - percentage of ground cover comprised of weeds
 - presence or absence of pest animals in the Remediation Area
 - details of any remediation work required within the Remediation Area, 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 annually.

5 Reporting

Initial works report

- 5.1 Within one hundred and twenty (120) days of issuance of this Order, the Remediator must obtain and submit to the Department a written initial condition report and remediation plan for the Remediation Area prepared by a suitably qualified ecologist (as described in 3.2).

The remediation plan must detail actions to be undertaken by the Remediator to restore the Remediation Area to pre-clearing state of stem density and ground cover of the mapped plant community "*PCT 422: Smooth-barked Apple - cypress pine - Narrow-leaved Ironbark - White Bloodwood tall heathy woodland of the Pilliga forests to Warialda region, Brigalow Belt South Bioregion and PCT 597: White Box - cypress pine - Silver-leaved Ironbark shrub grass open forest / woodland of the northern Brigalow Belt South Bioregion and Nandewar Bioregion*", through detailing a program of planting/sowing of both upper and mid story species.

- 5.2 This report must contain:
- confirmation of the exclusion of stock from the Remediation Area, and the dates this action was performed
 - the percentage of ground cover that is comprised of exotic flora and priority weeds in the Remediation Area
 - an assessment of pest animal presence within the Remediation Area
 - advice of any completed, required, or proposed work within the Remediation Area; this could include (but not limited to) actions such as fencing, weed control, pest control or fire activity.

Annual monitoring report

- 5.3 For the duration of this Order, the Remediator must submit an Annual Monitoring Report to the Department for the Remediation Area. The initial report is due twelve (12) months from the date of issue of this Order, and annually thereafter. Monitoring Reports must contain the records made for all inspections (refer 4.3).
- 5.4 With respect to requirements under 5.3, for a period of five (5) years after submission of the initial works report, the annual monitoring report must be prepared by a suitably qualified ecologist (as described in 3.2), and detail progress against, and compliance with, the remediation plan submitted under 5.1, and contain the records made for all inspections (see requirement 4.3).
- 5.5 After the initial five (5) year period, the Remediators may prepare subsequent annual reports with respect to the Remediation Area to the Department without the need to engage an ecologist. Each Monitoring Report must contain the records made for all inspections (refer 4.3).
- 5.6 Reports may be submitted to the Department by:
- Mail, courier, or hand to:
Compliance and Regulation Team
Biodiversity and Conservation North West
Level 1, 48-52 Wingewarra Street

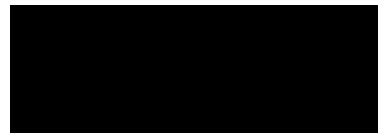
P.O. Box 2111
Dubbo NSW 2830

OR

- Email to:

ROG.North@environment.nsw.gov.au

marked to the attention of the Compliance and Regulation Team



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Senior Team Leader

Compliance and Regulation North West

Biodiversity Conservation and Science Group

(by Delegation)

Definitions

In this Order, the following definitions apply:

Term	Definition
Areas of interest	Areas where native vegetation has been cleared
Clearing	Has the same meaning as defined in section 60C of the <i>Local Land Services Act 2013</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" as defined in section 60B of the <i>Local Land Services Act 2013</i>
Native vegetation	Has the same meaning as defined in 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>
PCT	Plant Community Type
Remediation Areas	The areas located on the Property shown schematically on the map in Attachment B 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	Sustainable grazing is grazing by livestock, and the management of grasslands used for grazing, that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation
Threatened Ecological Community	Has the same meaning as defined in the <i>Biodiversity Conservation Act 2016</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.

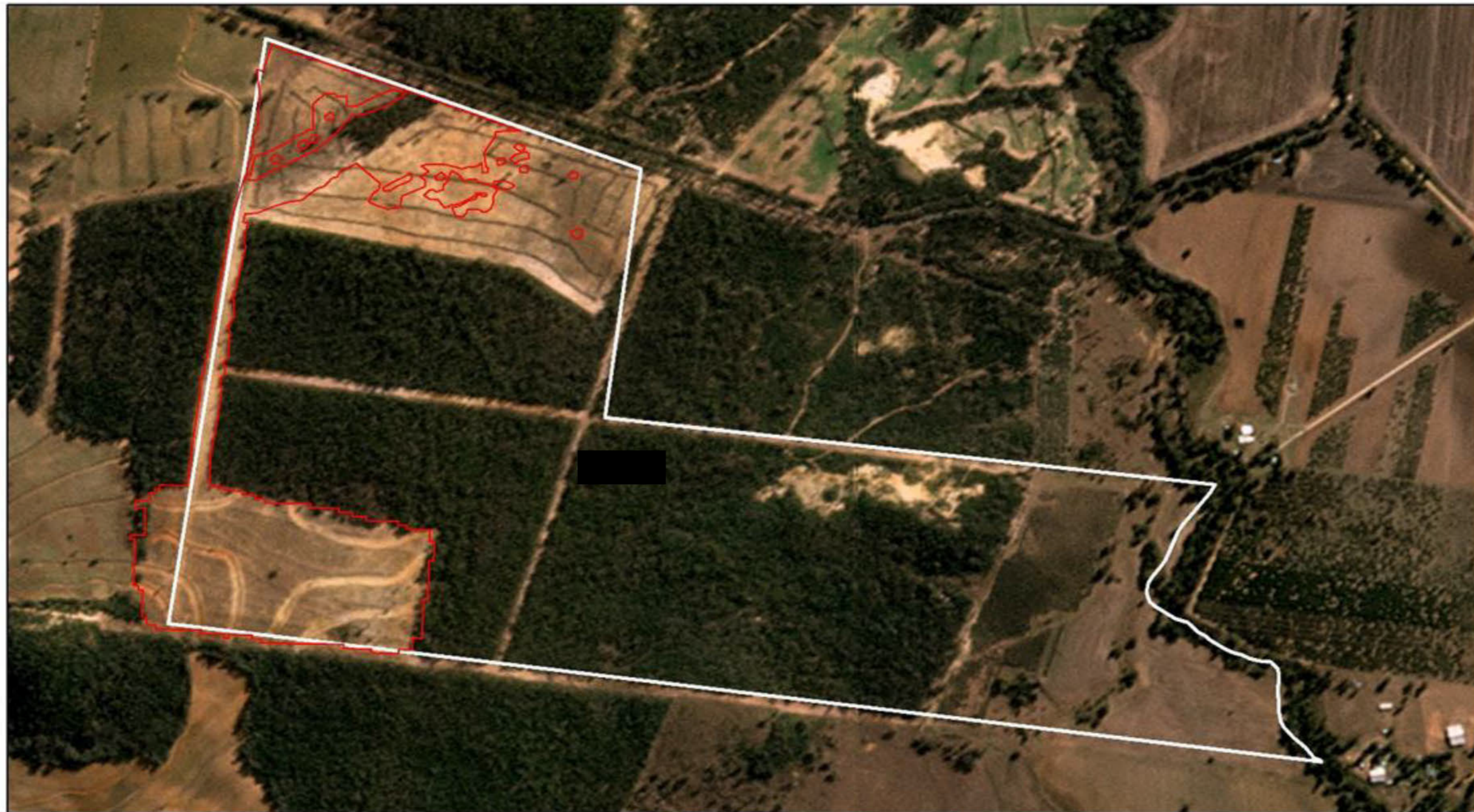
Appeal: Section 11.23(1) of the BC Act allows for a person given a remediation order to appeal against the giving of the Order (or any terms of the Order) to the NSW Land and Environment Court within thirty (30) days of the service of the Order. However, even if an appeal is lodged, you must comply with 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:

- A. Map of the Areas of interest
- B. Map of the Remediation Areas
- C. Revegetation requirements

Attachment A: Areas of interest (AOI)



Legend

-  AOI = 38ha
-  Lot/DP

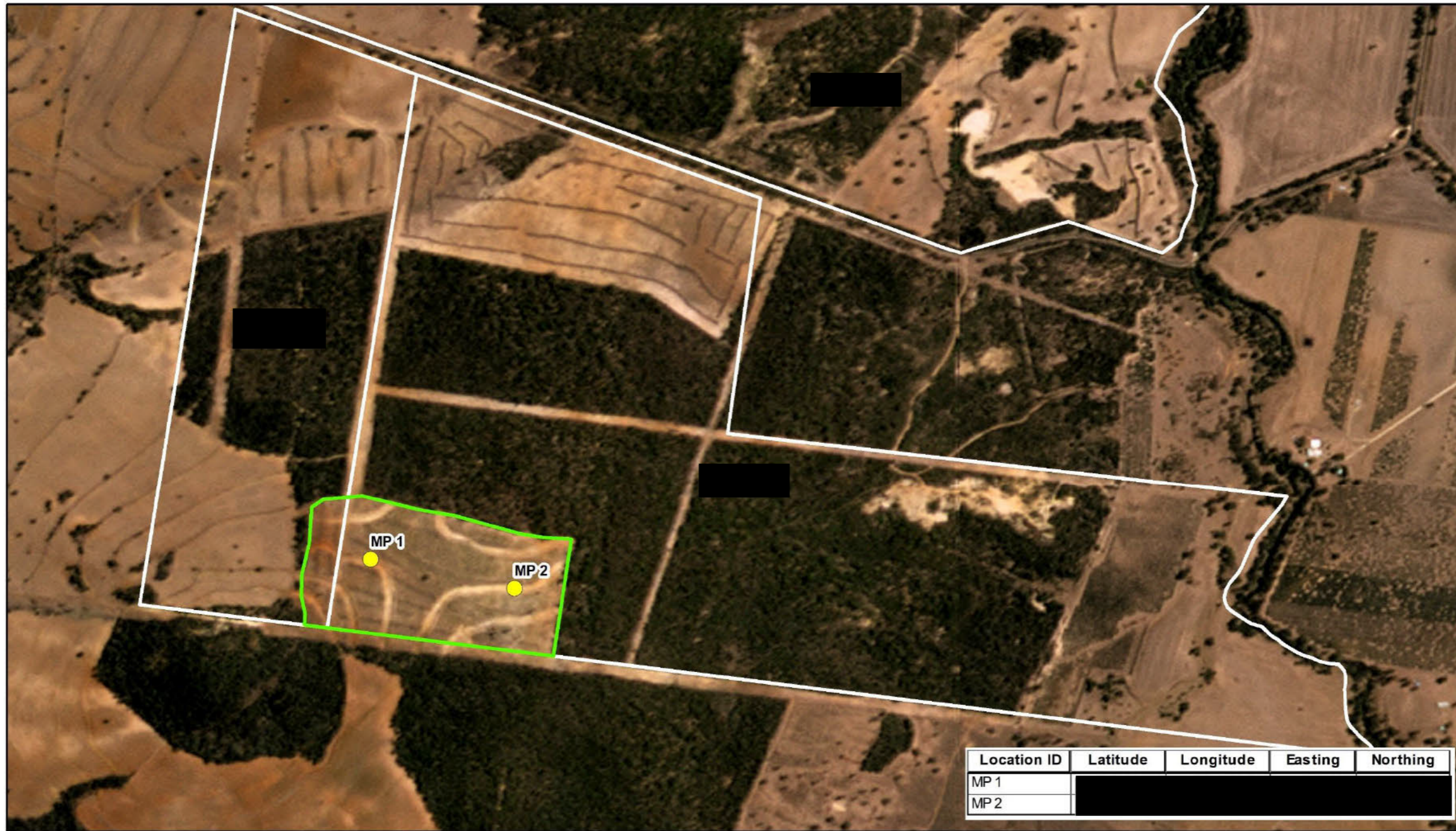


Imagery: Planet July 2023

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accept liability for any act done or the information in the map and any consequences of such acts or omissions.
Map produced 1/06/2023
Map Produced by [redacted]

0 200 400
Metres
Datum/Projection: GCS GDA 1994





Legend

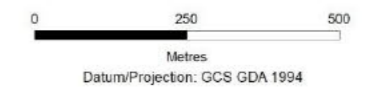
- Monitoring Points
- Remediation Area

[Redacted]

Imagery: Planet October 2023

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Map produced 28/10/23
Map produced by [Redacted]



Attachment C: Revegetation requirements

PCT 422 - Smooth-barked Apple - cypress pine - Narrow-leaved Ironbark - White Bloodwood tall heathy woodland of the Pilliga forests to Warialda region, Brigalow Belt South Bioregion.

PCT 597: White Box - cypress pine - Silver-leaved Ironbark shrub grass open forest / woodland of the northern Brigalow Belt South Bioregion and Nandewar Bioregion