

Remediation Order



Planning,
Industry &
Environment

ORDER ISSUED TO:



Notice Number: 09239-2018-1
Case Reference Number: 09239-2018
Date: 7 July 2020

BY Email  and post

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

BACKGROUND

- A. The Department of Planning, Industry and Environment has responsibility for the enforcement of the now repealed *Native Vegetation Act 2003 (NV Act)*
- B. The NV Act was repealed on 25 August 2017.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 the NV Act committed before 25 August 2017.
- D. Pursuant to section 11.15 of the BC Act, if the Secretary of the Department of Planning, Industry and Environment is satisfied that damage has occurred in or as a result of the commission of an offence against the NV Act, the Secretary may order a person to carry out specified remediation work in a specified manner and within a specified time.
- E. Anne-Marie Poirrier, holds the position of Director, Greater Sydney Branch, Climate Change and Sustainability Division within the Department of Planning, Industry and Environment.
- F. Director, Greater Sydney Branch holds delegated authority on behalf of the Secretary of the Department of Planning, Industry and Environment for the purposes of section 11.15 of the BC Act.

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- G. [REDACTED] is the current owner of [REDACTED], at [REDACTED] (the Property).
- H. [REDACTED] is [REDACTED] and is the manager of the property.

BASIS FOR ISSUING REMEDIATION ORDER

- I. The Department of Planning, Industry and Environment has investigated the clearing of 6.35 ha of native vegetation on the Property between 9 April 2017 and 8 July 2017.
- J. Under Section 12(1) of the NV Act, it was an offence to clear native vegetation without a consent granted under the Act or a property vegetation plan.
- K. Information and evidence obtained to date, including an inspection, photographs, GPS waypoints, responses to notices, witness interviews, an expert ecologist's report and expert aerial photograph interpretation indicates that damage occurred on the Property to native vegetation between 9 April 2017 and 8 July 2017. The damage caused to native vegetation comprised near complete removal of the ground cover and mid-storeys, while the overstorey has been left intact. Further, the vegetation cleared was subject to mulching and much of the resultant material was left in situ, restricting native vegetation regrowth. Some disruption of the soil profile has also occurred. Information and evidence obtained to date also indicates that the damage occurred in or as a result of clearing of native vegetation contrary to section 12 of the NV Act and that none of the available defences listed in the Act and associated Regulations in relation to the offence apply.
- L. [REDACTED] has admitted to engaging a contractor to undertake the clearing.
- M. The works required by this remediation order provide for the maintenance, remediation and restoration of the damaged area.

OPINION

- N. I, Anne-Marie Poirrier, Director, Greater Sydney Branch, am satisfied that native vegetation has been damaged in or as a result of the commission of an offence against Section 12(1) of the NV Act.

ORDER TO CARRY OUT REMEDIATION WORK

- O. In order to:
- a) maintain, remediate or restore the damaged area, habitat, plant, animal or vegetation concerned;

I, Anne-Marie Poirrier, Director, Greater Sydney Branch, 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 twenty (20) years from the date of this order:

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1 REMEDIATION WORK

- 1.1 In this Order, Remediation Area means the area identified as the Remediation Area on the attached map at Attachment -1 titled Map of the Remediation Area which includes GPS coordinates for the location of the Remediation Area.

2 EXCLUSION OF REMEDIATION AREA

- 2.1 The Remediator must clearly mark the unfenced boundaries of the Remediation Area as shown on the map at Attachment 1 by 7 October 2020.
- 2.2 The Remediator must remove all stock from the Remediation Area by [3 months from date of this order].
- 2.3 Any stock found within the Remediation Area after 7 October 2020 must be removed by the Remediator as soon as practicable and in any event within 14 days of becoming so aware.
- 2.4 Clauses 2.2 & 2.3 do not apply to those occasions when stock are being moved along the track within the remediation area between grazing paddocks within the landholding.
- 2.5 The Remediator 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 stock are present within or have been using the Remediation Area.

3 WEED, EXOTIC SPECIES, COMMERCIAL CROP AND NON-NATIVE PLANT MANAGEMENT

- 3.1 If at any time any exotic species, commercial crops or non-native plant species are found within the Remediation Area, the Remediator must destroy all such 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 28 days of becoming aware.
- 3.2 The Remediator 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 exotic species, commercial crops or non-native plant species are present within the Remediation Area.

4 MANAGEMENT OF DISTURBANCE

- 4.1 The Remediator must remove the bike track that has been created within the Remediation Area, by respreading the mounds of soil that have been formed, by 7 October 2020.
- 4.2 The Remediator must prevent further human disturbance to the Remediation Area.
- 4.3 If at any time human disturbance is found within the Remediation Area, the Remediator must rectify that disturbance as soon as practicable and in any event within 28 days of becoming aware
- 4.4 The Remediator 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 human disturbance is present within the Remediation Area

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5 MANAGEMENT OF EROSION

- 5.1 The Remediator must treat the erosion present within the Remediation Area by 7 October 2020.
- 5.2 If at any time erosion is found within the Remediation Area, the Remediator must treat the erosion as soon as practicable and in any event within 28 days of becoming aware
- 5.3 The Remediator 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 erosion is present within the Remediation Area

6 RECORDS

- 6.1 The following records must be kept by [REDACTED] 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.
- 6.2 The following records must be kept by [REDACTED] 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; and
 - c) the date on which this work was completed.
- 6.3 All records required to be kept by this Order must be:
 - a) true, accurate and correct;
 - b) in a legible form, or in a form that can readily be reduced to a legible form;
 - c) kept for at least 4 years after the inspection or event to which they relate took place; and
 - d) produced in a legible form to any authorised officer of DPIE who asks to see them.

7 REPORTING

- 7.1 [REDACTED] must prepare and submit an Initial Works Report:
 - a) By Registered Post to:

Senior Team Leader Compliance and Regulation
Greater Sydney Branch
Department of Planning, Industry and Environment
Locked Bag 5022 Parramatta 2124

or
 - b) By courier or by hand to:

Senior Team Leader Compliance and Regulation
Greater Sydney Branch

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Department of Planning, Industry and Environment
Level 10, 4 Parramatta Square, 12 Darcy St, Parramatta NSW 2150
or

- c) By email to:
Senior Team Leader Compliance and Regulation
gs.complianceregulation@environment.nsw.gov.au
by 7 October 2020

7.2 The Initial Works Report must include but not be limited to:

- a) The information specified in Attachment 2: Initial Works Report

7.3 [REDACTED] must prepare and submit a Monitoring Report:

- a) By Registered Post to:
Senior Team Leader Compliance and Regulation
Greater Sydney Branch
Department of Planning, Industry and Environment
Locked Bag 5022 Parramatta 2124
or
- b) By courier or by hand to:
Senior Team Leader Compliance and Regulation
Greater Sydney Branch
Department of Planning, Industry and Environment
Level 10, 4 Parramatta Square, 12 Darcy St, Parramatta NSW 2150
or
- c) By email to:
Senior Team Leader Compliance and Regulation
gs.complianceregulation@environment.nsw.gov.au
by 7 July 2021 and on 7 July each year thereafter, a report for each "reporting period".

7.4 The Monitoring Report must include but not be limited to:

- a) The information specified in Attachment 3: Monitoring Report.

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8 DEFINITIONS

In this order, 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. 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.
“ Pest herbivores ”	means hares, rabbits, and camels but does not include stock.
“ Remediation Area ”	means the areas located on the Property shown schematically on the map in Attachment 1 shaded in yellow and marked “Remediation Area” being parts of [REDACTED].
“ Remediator ”	means [REDACTED]
“ Reporting period ”	means each annual period commencing from 7 July 2021 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.
“ Weed ”	means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i>

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 Secretary of the Department of Planning, Industry and Environment or 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.

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- 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.
- DPIE 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.

A handwritten signature in black ink, appearing to read 'Anne Marie Poirrier', written over a dotted line.

.....
Anne-Marie Poirrier
Director, Greater Sydney Branch
(by Delegation)

Attachment:

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

Attachment 1: Map of the Remediation Area

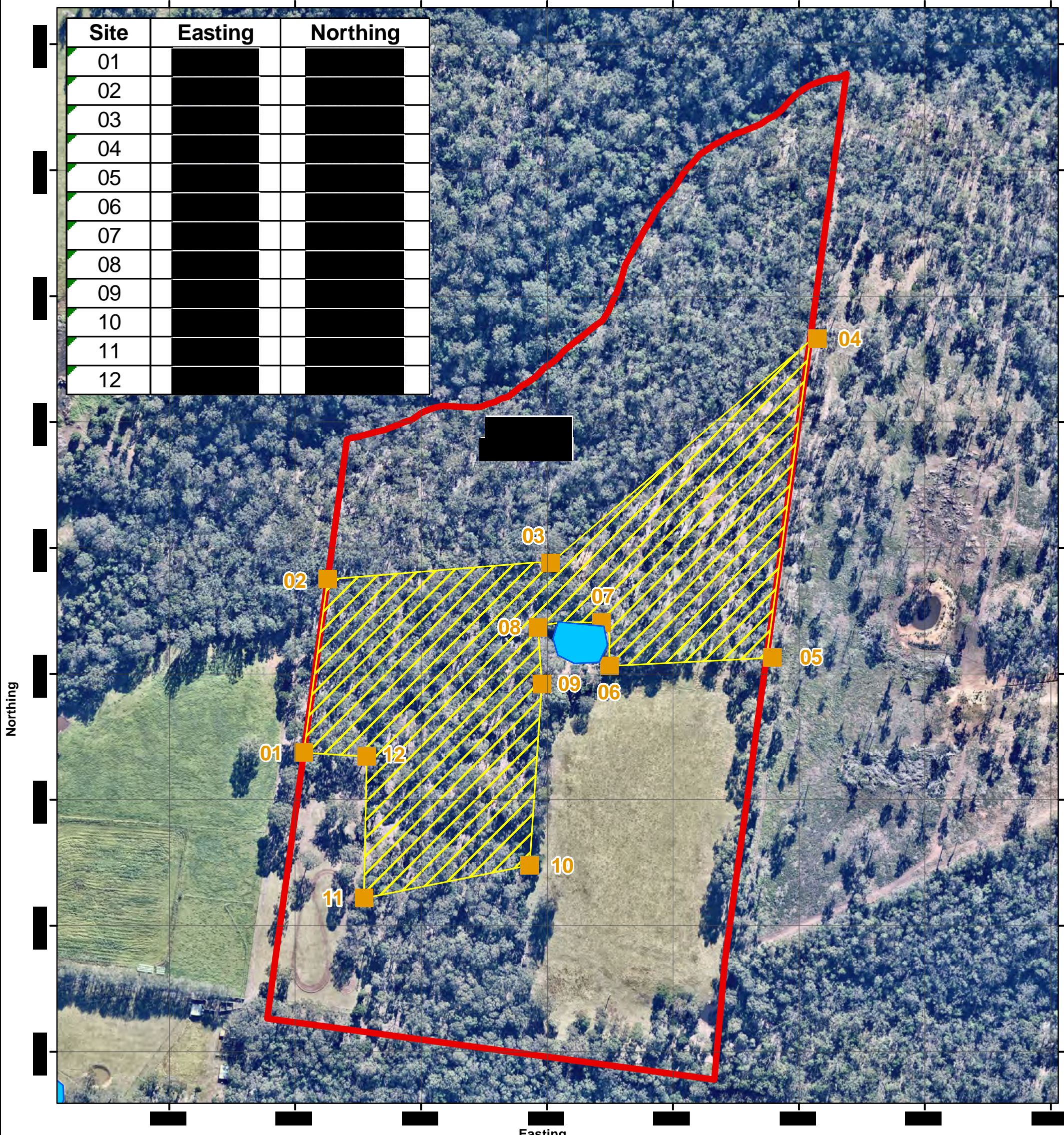
Biodiversity Conservation Act 2016 s11.15 Remediation Order



Property Owners: [REDACTED]
 Remediation Order: 09239-2018-1
 [REDACTED]
 Lot/DP: Lot [REDACTED] in Deposited Plan (DP) [REDACTED]

County: [REDACTED]
 Parish: [REDACTED]
 LGA: [REDACTED]

Site	Easting	Northing
01	[REDACTED]	[REDACTED]
02	[REDACTED]	[REDACTED]
03	[REDACTED]	[REDACTED]
04	[REDACTED]	[REDACTED]
05	[REDACTED]	[REDACTED]
06	[REDACTED]	[REDACTED]
07	[REDACTED]	[REDACTED]
08	[REDACTED]	[REDACTED]
09	[REDACTED]	[REDACTED]
10	[REDACTED]	[REDACTED]
11	[REDACTED]	[REDACTED]
12	[REDACTED]	[REDACTED]



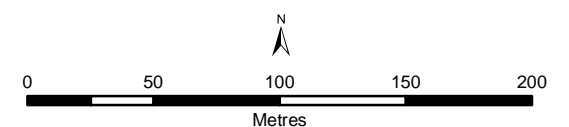
Legend

- Remediation Area
- The Property
- Dam (15m buffer from outside of bank)

Base imagery captured on 28.05.2020 includes material © Nearmap Photomaps.

Base cadastral and topographic data supplied by NSW Land and Property Management Authority.

Responsibility lies with the property owner to confirm the accuracy of information supplied by the NSW Land and Property Management Authority.



Map Scale: 1:3,000

Map Datum/Projection: GDA 94 MGA Zone 56

Date: 5 June 2020

Plan No: S11.15_09239-2018-1_V1