



Remediation Order

Order Number: 11685-2018-2
CCMS Case Ref. No.: 11685-2018
Variation Issue Date: 18/10/2021
Property: [REDACTED]

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

By email: [REDACTED]

Date of issue of original Order number 11685-2018-1: 05/02/2021

Date of issue of variation Order number 11685-2018-2: 18/10/2021

Who are we: The Department of Planning, Industry and Environment (**the Department**) has responsibilities regarding the administration and enforcement of the *Biodiversity Conservation Act 2016* (NSW) (**the BC Act**) and its associated Regulations, and responsibilities regarding the enforcement of Part 5A of the *Local Land Services Act 2013* (NSW) (**the 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 are you 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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1. VARIATION OF DIRECTION TO CARRY OUT REMEDIATION WORK

In accordance with s11.15 (3) and (4) of the BC Act, I, [REDACTED], Senior Team Leader Compliance & Regulation, Biodiversity, Conservation & Science Directorate - South West, hereby vary the requirements of the Remediation Order (the Order) issued to [REDACTED] and [REDACTED] on the 05/02/2021 to carry out remediation works to repair damage caused by clearing of native vegetation in contravention of the Biodiversity Conservation Act 2016 (BC Act). The contents that have been varied are:

1. Condition 3.1.1 has been removed and replaced by Conditions 3.1.1.1 – 3.1.1.3. This has been done to allow for opportunistic and strategic grazing that doesn't detrimentally effect regenerating native vegetation.
2. Condition 3.1.4 now includes a reference to Conditions 3.1.1.1 – 3.1.1.3.
3. The Remediation Area has been varied in location and size. The varied area is shown on Attachment B - Remediation Area Map 1 and Attachment C - Remediation Area Map 2.

The circumstances leading to the variation were because of a request to amend the grazing condition to allow for opportunistic and strategic grazing and to amend the Remediation Areas.

2. DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT OBSERVATIONS

The Department investigated a report of native vegetation clearing on the property known as [REDACTED] (**the Property**) between 2 June 2018 and 10 September 2018. A list of the Lot/DPs (land parcels) within the Property can be found in the Definitions section and observed on *Attachment A – Property Map*.

Under the LLS Act, it is an offence to clear native vegetation in a regulated rural area contrary to section 60N of the LLS Act.

Information and evidence obtained during the investigation, including an assessment of aerial and satellite imagery, site inspections and ecological assessments indicates that damage occurred on the Property to native vegetation on Category 2 – Regulated Land between 2 June 2018 and 10 September 2018. The damage caused to Category 2 - Regulated Land comprised the removal of approximately 10ha of woody native vegetation.

The information and evidence obtained indicated that the damage occurred in or as a result of clearing of native vegetation contrary to section 60N of the LLS Act and that none of the available defences listed in the BC Act and/or Part 5A LLS Act and associated regulations in relation to the offence apply.

The Remediation Area is designated on the in force Native Vegetation Regulatory Map, prepared pursuant to Division 2 of the LLS Act, as Category 2 – Sensitive Regulated Land.

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3. REASONS FOR VIEW FORMED

I, [REDACTED], Senior Team Leader Compliance & Regulation, Biodiversity, Conservation & Science Directorate - South West, am satisfied that the following has been damaged:

- a) native vegetation on Category 2 - Regulated Land under Part 5A of the LLS Act, namely, the removal of approximately 10ha of woody native vegetation

in or as a result of the commission of an offence against section 60N of Part 5A of the LLS Act.

In order to:

- a) mitigate the damaged vegetation concerned;

I, [REDACTED], Senior Team Leader Compliance & Regulation, Biodiversity, Conservation & Science Directorate - South West, order [REDACTED] and [REDACTED] (**the Remediator**) to carry out the following remediation work on the Property for a period of twenty-five (25) years from the date of the original Order number 11685-2018-1: issued 05/02/2021.

[REDACTED] holds delegated authority on behalf of the Environment Agency Head for the purposes of section 11.15 of the BC Act.

4. REQUIREMENTS – WHAT YOU MUST DO TO COMPLY

In this Order, Remediation Area means the areas labelled 'Remediation Area 1' on *Attachment B – Remediation Area Map 1* and 'Remediation Area 2' on *Attachment C – Remediation Area Map 2*.

This Order must be complied with from the date of issue and for the Term of the Order.

4.1 General Requirements

- 4.1.1.1 Stock are not to be fenced within the remediation area at any time.
- 4.1.1.2 The Remediator may allow limited numbers of stock to opportunistically or strategically graze the Remediation Area to suppress weeds and reduce the risk of fire. However, if the Department considers the stock to be having a negative impact on the Remediation Area, stock will need to be excluded from the Remediation Area.
- 4.1.1.3 The Remediator must monitor the impact of stock on the remediation area and cease grazing and exclude stock if they're found to be detrimentally affecting regenerating native vegetation.
- 4.1.2 Within sixty (60) days of issuance of this Order the Remediator must remove all weeds, commercial crops, and non-native plant species from within the Remediation Area by using selective methods (non-mechanised) of poisoning and/or manual removal and you must continue to control and remove all weeds, commercial crops, and non-native plant species from within the Remediation Area for the Term of the Order.
- 4.1.3 Within sixty (60) days of issuance of this Order the Remediator must undertake pest animal removal from within the Remediation Area and the Remediator must continue to undertake pest animal control and removal within the Remediation Area for the Term of the Order.
- 4.1.4 The following activities are prohibited within the Remediation Area except in accordance with written permission from the Department:



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- Soil disturbance (including cultivation),
 - Clearing of any native vegetation,
 - Grazing (apart from as outlined in Condition 3.1.1.1 to 3.1.3.3),
 - Removal of fallen timber,
 - Aerial or boom spraying,
 - Construction of any infrastructure, and
 - Storage of waste.
- 4.1.5 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.
- 4.1.6 The Remediator is responsible for all costs associated with implementing and complying with the conditions of this Order.
- 4.1.7 The Remediator must ensure all people entering the Remediation Area do not use the land in a manner that would contradict this Order.
- 4.1.8 The Remediator must inform all purchasers of the land of this Order.
- 4.1.9 The Remediator must notify the Environmental Agency Head within fourteen (14) days if you intend on selling the land subject to this Order.

4.2 Monitoring

- 4.2.1 The Remediator must regularly inspect the Remediation Area (minimum four times each year) for the purposes of determining:
- The presence of weeds, commercial crops, and non-native plant species within the Remediation Area.
 - The presence of pest animals within the Remediation Area.
 - The presence and impact of stock within the Remediation Area
 - Whether any prohibited activities have occurred within the Remediation Area.

4.3 Record Keeping

- 4.3.1 The following records must be made by the Remediator (in the form provided at *Attachment E – Monitoring Report*):
- The date(s) on which the inspection was undertaken.
 - The name of the person who undertook the inspection.
 - The presence of weeds, commercial crops, and non-native plant species within the Remediation Area.
 - The presence of pest animals within the Remediation Area.
 - The presence and impact of stock within the Remediation Area.
 - Observations made during the inspection
 - Details of any work required (Corrective Actions) within the Remediation Area.
 - The date(s) any work was completed.
- 4.3.2 All records required to be kept by this Order must be:
- Made in the form provided at Attachment C.

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- Be true, accurate, correct and in legible form.
- Kept for the duration of this Order.

4.4 Reporting Requirements

- 4.4.1 Within sixty (60) days you must submit a completed Initial Works Report (*Attachment D - Initial Works Report*).
- 4.4.2 Twelve (12) months from the date of this Order you must submit a completed Annual Monitoring Report (*Attachment C*). You must submit a completed report by 1 February every year for the duration of the Order. All reports must be scanned and emailed to compliance.southwest@environment.nsw.gov.au or sent by Registered Post to:

Team Leader
Compliance & Regulation – South West
NSW Department of Planning, Industry and Environment
PO Box 5336
Wagga Wagga NSW 2650

5. AN EXAMPLE OF HOW YOU CAN COMPLY

One way of achieving compliance with this Order would be to:

1. Remove all stock from the Remediation Area or ensure stock are not detrimentally affecting the regenerating native vegetation.
2. Removal of weeds, commercial crops, and non-native plant species by selectively poisoning and manually removing when present.
3. Remove and control pest animals by baiting, trapping, or hunting when they're present.
4. Prevent human disturbances to the Remediation Area for the duration of the Order, except for work required for the removal of stock, and the management of weeds, commercial crops, non-native plant species, or pest animals.
5. Submit completed copies of the Initial Works Report and Annual Monitoring Reports as required by this Order.

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DEFINITIONS

In this Order, the following definitions apply:

Term	Definition
BC Act	Means the <i>Biodiversity Conservation Act 2016</i>
Commercial Crop	Means any cultivated plant grown commercially (e.g. cereal, fruit, or vegetable).
Damage	Damage has the same meaning as defined in section 11.14 of the <i>Biodiversity Conservation Act 2016</i>
The Department	The NSW Department of Planning, Industry and Environment.
LLS Act	Means 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>
Non-native Plant	Means any plant that is not native to Australia.
Order	This document as varied: a Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i>
Pest Animal	Means an animal that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> .
Remediation Area	Means the areas located on the Property shown schematically on the maps at Attachment B and Attachment C, outlined in green and marked 'Remediation Area 1' and 'Remediation Area 2' being parts of Lot [REDACTED]
Remediator	[REDACTED]
Reporting period	Reporting period Means each annual period from the commencement 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.
Term	Means twenty-five (25) years from 5/02/2021.
The Property	[REDACTED]
Weed	Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> .

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BACKGROUND TO THE ISSUE OF THIS NOTICE

- A. The Department has responsibility for the enforcement of native vegetation legislation in NSW.
- B. Under section 11.15 of the BC Act, the Environment Agency Head, being the Chief Executive of the Department, may vary an Order to carry out remediation work.
- C. [REDACTED] holds the position of Senior Team Leader, Compliance & Regulation, within the Department's Biodiversity and Conservation Division's South West Branch. The Chief Executive of the Department has delegated their powers to vary an Order to carry out remediation work to officers in this position.
- D. Following our investigation of clearing on the property known as [REDACTED] (the **Property**) the Department concluded that native vegetation had been cleared on the land in contravention of the Local Land Services Act 2013 (**LLS Act**).
- E. [REDACTED] and [REDACTED] are the joint owners, and landholders of the Property.
- F. An Order to carry out remedial work, was issued to [REDACTED] and [REDACTED] with respect to the clearing on the Property on 05/02/2021 pursuant to section 11.15(4) of the BC Act to repair harm caused by the clearing.
- G. The purpose of this Notice is to vary the Order issued on 05/02/2021 following a site assessment of the progress of the remediation, compliance with the terms of the Order and the circumstances of the matter.
- H. The basis for varying this Order issued on 05/02/2021 is due to the request from [REDACTED] that the location and shape of the remediation areas be amended, and that the conditions relating to stock be amended.

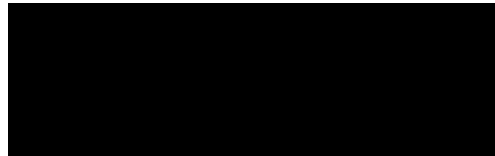
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WARNING AND INFORMATION ABOUT THIS ORDER

- If you fail to comply with this Order the Environment Agency Head or his/her 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).
- If you fail to comply with this Order, any person may seek an order from the NSW Land and Environment Court requiring you to rectify that breach of the legislation (section 13.14 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 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 LLS Act (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) under the BC Act or LLS Act. A Remediation Order is separate to any potential enforcement action.

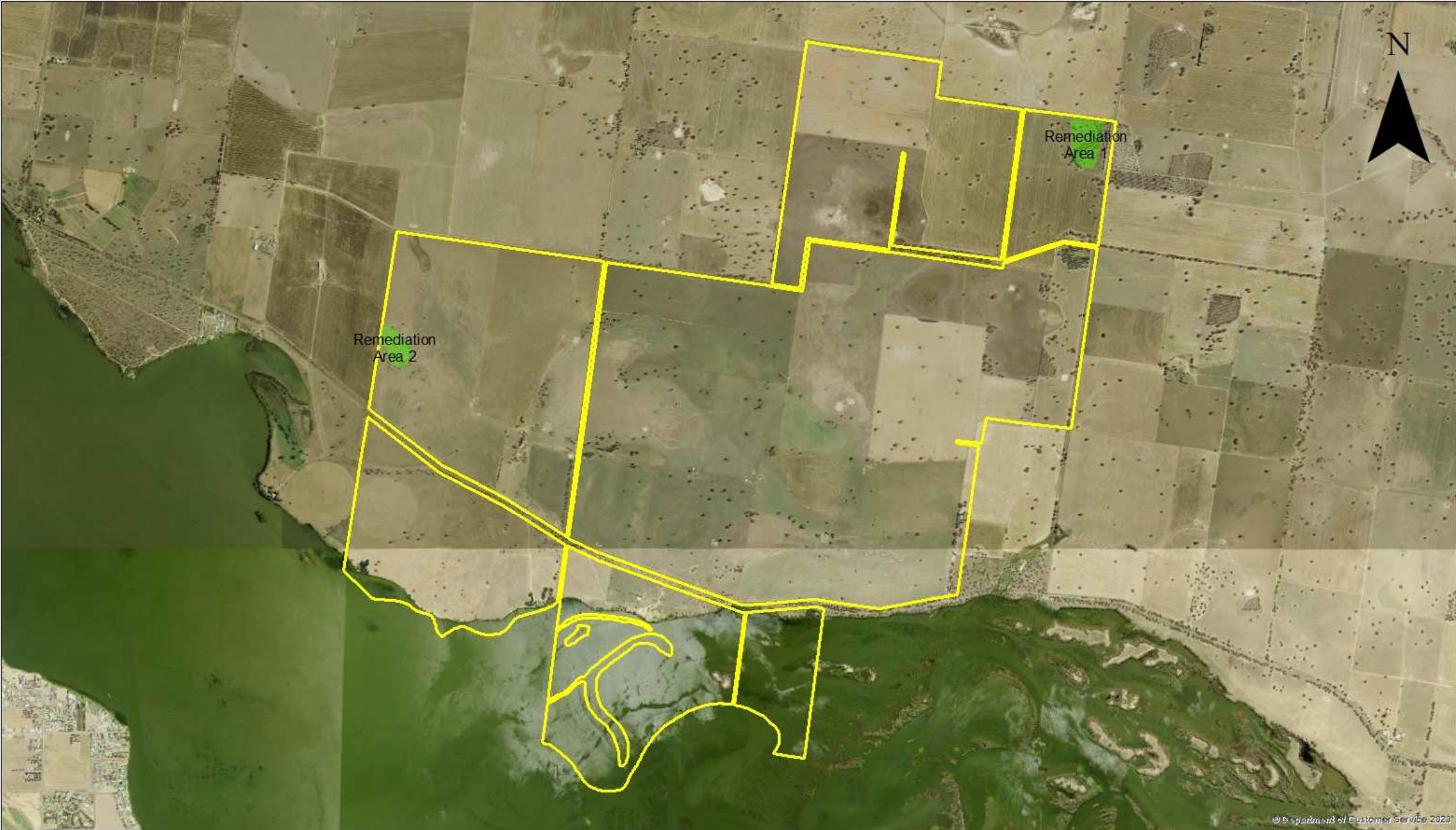


Senior Team Leader, Compliance & Regulation
South West Branch
Biodiversity, Conservation and Science Directorate
NSW Department of Planning, Industry and Environment
(by Delegation)

Attachment:

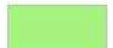

- A. Property Map
- B. Remediation Area Map 1
- C. Remediation Area Map 2
- D. Initial Works Report
- E. Annual Monitoring Report

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Legend

-  Remediation Area
-  Landholding

Attachment A - Property Map



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

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Case No.: 11685-2018
Author: 
Date: 8/10/2021
Imagery: 3 February 2015



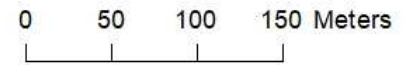
Point Number	Easting	Northing	Latitude	Longitude
12				
13				
14				
15				
16				
17				

Legend

-  Remediation Points
-  Remediation Area 1
-  Landholding

Attachment B - Remediation Area Map 1

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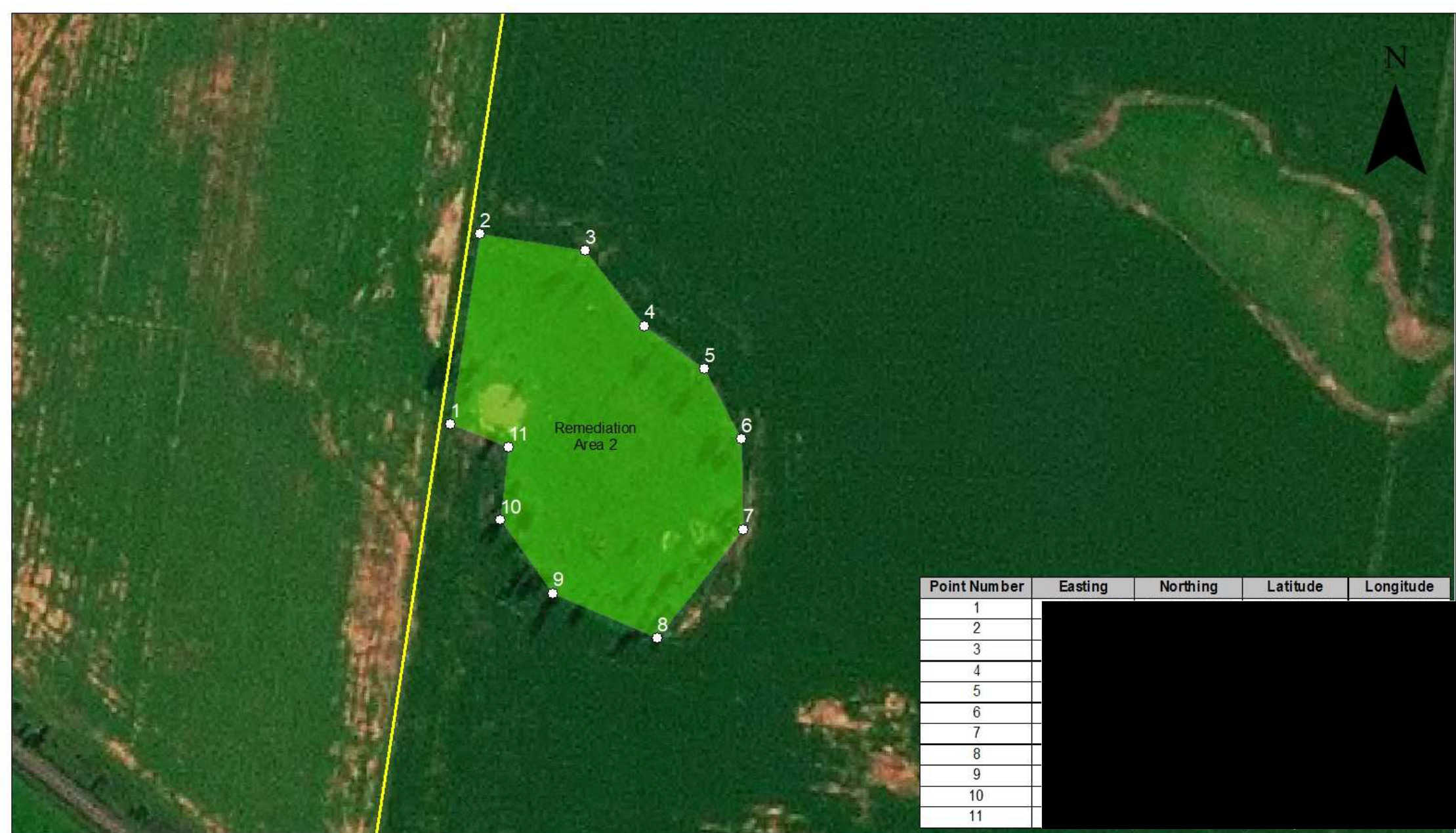


Datum/Projection: GCS GDA 1994



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Case No.: 11685-2018
Author: [REDACTED]
Date: 8/10/2021
Imagery: SPOT 2019



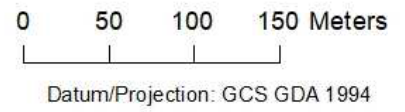
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1				
2				
3				
4				
5				
6				
7				
8				
9				
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11				

Legend


-  Remediation Points
-  Remediation Area 2
-  Landholding

Attachment C - Remediation Area Map 2

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