



Government of Western Australia
Department of Water and Environmental Regulation

Environmental Protection Act 1986

Section 65

**ENVIRONMENTAL PROTECTION NOTICE
AMENDMENT ONE – DATED 29 AUGUST 2018**

PERSON TO WHOM THIS NOTICE IS GIVEN:

SHEOAK TREE MILLING PTY LTD
ACN: 126 185 386
C/-Porter and Stein
Suite 7, 1 Charles Street
SOUTH PERTH WA 6151

Sheoak Tree Milling Pty Ltd is the owner of land that comprises all or part of the Premises to which this notice relates.

PREMISES TO WHICH THIS NOTICE RELATES

5731 Brand Highway BEERMULLAH in Western Australia and more particularly described as:

Lot 104 on Deposited Plan 60851, as shown on Certificate of Title Volume 2719, Folio 680,
being the land as shown in Schedule 1 of this Notice.

REASONS FOR WHICH THIS NOTICE IS GIVEN

This Notice is given to Sheoak Tree Milling Pty Ltd (*Owner*) under section 65 of the *Environmental Protection Act 1986 (the EP Act)* because the Chief Executive Officer (*the CEO*) of the Department of Water and Environmental Regulation (*DWER*) suspects on reasonable grounds that there is, and is likely to be, emissions from the Premises, and the emissions are likely to cause pollution.

In particular, the CEO suspects on reasonable grounds that:

- *Chicken Waste* has been buried on and in the ground at the Premises;
- The surface water and groundwater flow direction on and under the Premises makes it highly likely that the emissions are currently discharging to, or will in the future discharge to, Conservation Category and Resource Enhancement wetlands and Whitfield Brook;
- The emissions are likely to cause degradation of the environment through eutrophication, changes to species composition, reduction in biodiversity and damage to the habitat of native flora and fauna within these wetlands and Whitfield Brook

REQUIREMENTS OF THIS NOTICE

- This Notice requires the Owner to undertake specified measures to investigate the extent and nature of the emissions, prepare and implement a plan to abate the emissions and to take such measures as the CEO considers necessary to prevent emissions. The Owner is also required to monitor the effectiveness of these actions.
- Pursuant to section 65(5) of the EP Act a person who is bound by an Environmental Protection Notice and who does not comply with a requirement contained in the notice commits an offence. Pursuant to section 118 of the EP Act, if a body corporate commits an offence under this Act or Regulations, each person who is a director or who is concerned with the management of the body corporate is taken to have also committed the same offence.

1. Measures Necessary to Prevent Pollution

- 1.1. Upon receipt of the Notice, the Owner must immediately stop causing or allowing the burying, stockpiling, storing, spreading or disposing of Chicken Waste on or in the ground on the Premises.

2. Investigation of the Extent and Nature of Emissions

- 2.1. Within 14 days from the day after the receipt of this Notice, the Owner is to engage and retain an *Environmental Consultant* to investigate the extent of any Chicken Waste deposited on or in the ground within the *Specified Area*.
- 2.2. The investigation described in paragraph 2.1 must include sampling within each Specified Area to establish the extent of any Chicken Waste deposited on or in the ground.
- 2.3. Samples must be tested for total nitrogen, ammonia, nitrate/nitrite, total phosphorous, total kjeldahl nitrogen and filterable reactive phosphorus.
- 2.4. The investigation must be completed within 40 days from the day after engaging the Environmental Consultant identified in paragraph 2.1.

Reporting the Extent and Nature of the Emissions

- 2.5. Within 7 days from the day of engaging the Environmental Consultant, the Owner must *Provide in Writing* to the CEO notice of the environmental consultant, including their name and contact details.
- 2.6. The Owner must provide an *Investigation Report* to the CEO of DWER within ~~30 days~~ 90 days from the day after the completion of the investigation identified in paragraphs 2.1 to 2.4. (*Amended by Amendment One dated 29 August 2018*) The Investigation Report must include:
- 2.6.1. Global Positioning Systems (GPS) coordinates of all sampling points within each Specified Area;
 - 2.6.2. GPS coordinates of all Chicken Waste located in or on the ground within each Specified Area;
 - 2.6.3. a map showing the location of all Chicken Waste identified within the Specified Area;
 - 2.6.4. estimations of the quantity of Chicken Waste in each location;
 - 2.6.5. copies of all results for samples taken from the Premises as part of the investigation.
- 2.7. If the Investigation Report concludes that no Chicken Waste has been buried or deposited within the Specified Area, evidence supporting the conclusion must be annexed to the Investigation Report, including photographs of the location, the number and location of soil samples taken from the area and the results of soil sample testing.
- 2.8. If the CEO considers the Investigation Report to be appropriate for the purpose of this Notice, the CEO will approve the Investigation Report and notify the Owner of his decision.
- 2.9. If the CEO considers that the investigation undertaken and/or the information within the Investigation Report is not appropriate for the purpose of this Notice, the CEO will provide the Owner with directions for improvement.
- 2.10. Where the Owner is provided with directions for improvement under paragraph 2.9, the Owner will ensure further investigations and/or amendments to the Investigation Report are taken in accordance with the directions. The amended Investigation Report must be resubmitted to the CEO for approval under paragraph 2.8 within 21 days after the day of receipt of the directions for improvement being issued by the CEO under paragraph 2.9.

3. Preparation and Implementation of a Remediation Plan to Abate Emissions

Preparation of Remediation Plan

3.1. The Owner must instruct the Environmental Consultant identified in paragraph 2.1 to prepare a *Remediation Plan*, based on the approved Investigation Report in paragraph 2.8, for the prevention, control or abatement of the pollution caused or likely to be caused by emissions from Chicken Waste on or in the ground at the Premises.

3.2. The Remediation Plan must state the methodology to be used to prevent, control or abate the emissions in the areas identified as containing Chicken Waste within the Investigation Report.

3.3 The Remediation Plan must be in accordance with the *Contaminated Sites Guidelines* and must:

- 3.3.1. identify each area where emissions have occurred;
- 3.3.2 identify whether any pollution has occurred from these emissions;
- 3.3.3. analyse the risk of pollution from the emissions;
- 3.3.4. state the methodology to be used to prevent, control or abate the emissions and the justification for this methodology;

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3.4. The Remediation Plan must be submitted to the Director of Science and Planning (Environment) within ~~30 days~~ 140 days from the day after the receipt of the approval of the Investigation Report described in paragraph 2.8 of this Notice. (*Amended by Amendment One dated 29 August 2018*)

3.5. If the Director of Science and Planning (Environment) considers the Remediation Plan submitted under paragraph 3.4 to be appropriate for the purpose of this Notice, the Director of Science and Planning (Environment) will approve the Remediation Plan and notify the Owner of the decision.

3.6. If the Director of Science and Planning (Environment) considers the Remediation Plan to be inappropriate for the purpose of this Notice, the Director of Science and Planning (Environment) will provide the Owner with direction for improvement.

3.7. If subject to a direction for improvement under paragraph 3.6 of this Notice, the Owner must, within 21 days from the day after the receipt of the direction provided in paragraph 3.6, ensure that the Remediation Plan is amended and resubmitted to the Director of Science and Planning (Environment) in accordance with those directions for approval under paragraph 3.4.

Implementation of Approved Remediation Plan

3.8. Remediation of the Premises, in accordance with the approved Remediation Plan identified in Paragraph 3.4, must be completed within 60 days from the day after the date of the receipt of the approval from the

Reporting

3.9. Within ~~30 days~~ 90 days from the day after the completion of the implementation of the Approved Remediation Plan, the Owner must provide a written report to the CEO on the remediation of the Premises for his approval. (*Amended by Amendment One dated 29 August 2018*) This report must include as a minimum:

- 3.9.1. how the Approved Remediation Plan was implemented;
- 3.9.2. any additional Chicken Waste not identified in the Investigation Plan located during implementation of the Approved Remediation Plan and how this was addressed;

- 3.9.3. GPS coordinates and a map showing all areas on the Premises where Chicken Waste had been removed from the ground;
 - 3.9.4. where the Chicken Waste, which has been identified by the investigation, was removed from the ground, where it was transported to;
 - 3.9.5. quantities of Chicken Waste removed from each Specified Area or other places on the premises;
- 3.10. Copies of all receipts, invoices, orders or any other documentation relating to the excavation and transport of the Chicken Waste must be attached to the Report.
- 3.11. Results from all sampling undertaken in implementation of the Approved Remediation Plan must be attached to the Report.
- 3.12. If the CEO considers the remediation of the Premises to be sufficient for the purposes of this Notice, the CEO will approve the remediation and notify the Owner of his decision.
- 3.13. If the CEO considers the Remediation to be unsatisfactory for the purpose of this Notice the CEO will provide the Owner with his reasons and provide direction for improvement.
- 3.14. The owner must within 21 days after the day of the receipt of the directions provided in paragraph 3.13 of this Notice, apply the CEO's directions and resubmit the Remediation Report as identified in paragraph 3.9 for approval.

4. Groundwater Monitoring

Construction of Monitoring Bores

- 4.1. Within 14 days from the day after the receipt of the notification of approval of the remediation by the CEO, as per paragraph 3.12, the Owner must engage and retain a contractor to install *Monitoring Bores* on the Premises at the locations depicted in Schedule 3 (*Longitude and Latitude and Lot 104 Aerial Photograph Locations of Monitoring Bores*).
- 4.2. The Monitoring Bores must be installed within 25 days from the day after engaging the contractor under paragraph 4.1.
- 4.3. The Monitoring Bores must be:
- 4.3.1. installed in accordance with section 8.2 of *Schedule B2 Guideline on Site characterisation* of the NEPM;
 - 4.3.2. able to draw water from the superficial aquifer which occurs between ground level and 45 meters below ground level;
 - 4.3.3. surveyed to allow the top of the bore casing and the ground level (to Australian height Datum) at each location to be accurately determined;
- 4.4. The Owner must ensure the bores are maintained in serviceable condition and are fit for the purpose of taking samples of groundwater for monitoring purposes as required under this Notice.

Reporting

- 4.5. Within 14 days from the day after completing the installation of the Monitoring Bores, the Owner must provide a written report to the CEO (*Monitoring Bore Report*) stating:
- 4.5.1. GPS coordinates of each monitoring bore;
 - 4.5.2. construction logs for each monitoring bore;

- 4.5.3. name and contact details of drilling contractor/s used to construct each monitoring bore;
 - 4.5.4. drilling method;
 - 4.5.5. total depth of each monitoring bore;
 - 4.5.6. depth to water for each monitoring bore.
- 4.6. If the CEO approves the Monitoring Bore Report for the purpose of this Notice, the CEO will notify the Owner with his decision.
- 4.7. If the CEO considers that construction of the monitoring bores as detailed in the Monitoring Bore Report is inappropriate for the purpose of this Notice, the CEO will provide the Owner with direction for improvement.
- 4.8. The Owner must, within 21 days from the day after the date of the receipt of the directions made under paragraph 4.7, apply those directions and resubmit the Monitoring Bore Report in accordance with paragraph 4.5 for approval.

Groundwater Monitoring

- 4.9. Within 14 days from the day after the completion of the installation of the Monitoring Bores and the CEO's approval under paragraph 4.6 of this Notice, the Owner must instruct the Environmental Consultant identified in paragraph 2.1 to:
- 4.9.1. prepare a sampling, analysis and quality plan (SAQP) in accordance with DWER's *Contaminated Sites Guidelines* and *Schedule B2 of NEPM*; and
 - 4.9.2. perform groundwater sampling in accordance with the approved SAQP in paragraph 4.12.
- 4.10. The SAQP must include as a minimum:
- 4.10.1. discussion of the environmental setting, including Identification of ecological receptors which may be impacted by surface or ground water pollution;
 - 4.10.2. sampling design and rationale matrix for groundwater sampling which must include regular sampling from every Monitoring Bore;
 - 4.10.3. identification of sites where surface water monitoring can occur both on and off the Premises, including identification of accessible sampling points outside the Premises;
 - 4.10.4. sampling design and rationale matrix for surface water on and off the Premises;
 - 4.10.5. the frequency of sampling and the justification for this;
 - 4.10.6. sampling is to occur every 6 months for a period of at least 5 years, commencing within one month of the approval of the SAQP as per paragraph 4.12, unless otherwise instructed by the CEO.
 - 4.10.7. methodology to be used to collect and store water samples and transport, including decontamination, chain of custody and quality assurance and control procedures;
 - 4.10.8. identification of the NATA accredited laboratory which will undertake testing of all samples;
 - 4.10.9. the requirement that testing of each water sample will include:
 - o physical parameters of each sample including , pH, electrical conductivity, dissolved oxygen, temperature and redox potential;
 - o heavy metals, including copper and zinc;
 - o bacteria, including total bacteria, faecal bacteria and thermotolerant coliforms and

- o total nitrogen, ammonia, nitrate/nitrite, total phosphorous, total kjeldahl nitrogen and filterable reactive phosphorus.
- 4.11. The draft SAQP must be provided to the CEO within ~~45 days~~ 90 days from the day after the receipt of the approval from the CEO for the installation of the Monitoring Bores under paragraph 4.6 of this Notice. (*Amended by Amendment One dated 29 August 2018*)
- 4.12. If the CEO considers the draft SAQP as appropriate for the purpose of this Notice, the CEO will approve the SAQP and notify the Owner of his decision.
- 4.13. If the CEO considers that the draft SAQP is inappropriate for the purpose of this Notice, the Owner will be provided with directions to improve the SAQP.
- 4.14. Within 21 days from the day after the date of the receipt of the directions for improving the SAQP identified in paragraph 4.13, the Owner is to amend the SAQP accordingly and submit it in accordance with paragraph 4.11 for the CEO's approval.

Reporting Groundwater Monitoring Results

- 4.15. Commencing from the day after the receipt of the approval of the SAQP under paragraph 4.12, the Owner is to provide to the CEO a *Sampling Report* every six months for a period of 5 years, unless otherwise instructed by the CEO. The Sampling Report is to include as a minimum:
- 4.15.1. a map showing groundwater elevation contours;
 - 4.15.2. an assessment of groundwater flow and quality within the superficial aquifer and analysis of any detected changes, including seasonal variation;
 - 4.15.3. mapping of groundwater levels and analysis of any fluctuations in levels for each monitoring bore;
 - 4.15.4. copies of laboratory results and chain of custody forms;
 - 4.15.5. analysis of laboratory results, including location and extent of any contaminants in the water and the likely environmental impact of these contaminants;
 - 4.15.6. analysis of any changes or trends identified with comparison of previous laboratory results; and
 - 4.15.7. a Tier 1 risk assessment comparing the monitoring results to the criteria published in the *Contaminated Sites Guidelines*.

5. General Reporting Requirements

- 5.1. If Sheoak receives any Chicken Waste from outside the Premises, the Owner must give the CEO written notification about the incident within 3 days of receipt. The notification must detail:
- 5.1.1 the reasons why the Chicken Waste was received;
 - 5.1.2 the type of Chicken Waste and quantity of Chicken Waste received;
 - 5.1.3 how the Chicken Waste is being stored, treated and disposed of.
 - 5.1.4 actions taken to ensure that the Chicken Waste received did not and will not cause any emissions.



Mike Rowe
Chief Executive Officer
Department of Water and Environmental Regulation

Dated 29 August 2018

Appendix 1: Definitions

Schedule 1: Certificate of Title

Schedule 2: Lot 104 Aerial Photograph Displaying Specified Area

Schedule 3: Longitude and Latitude and Lot 104 Aerial Photograph Locations of Monitoring Bores

IMPORTANT NOTE

A PERSON WHO IS BOUND BY THIS NOTICE AND WHO DOES NOT COMPLY WITH THIS NOTICE COMMITS AN OFFENCE.

A person who is aggrieved by a requirement contained in this notice may within 21 days of being given this notice lodge with the Minister for Environment an appeal in writing setting out the grounds of that appeal

Any other person who disagrees with a requirement contained in this notice may within 21 days of the making of that requirement lodge with the Minister for Environment an appeal in writing setting out the grounds of that appeal

PENDING THE DETERMINATION OF AN APPEAL REFERRED TO ABOVE THE RELEVANT REQUIREMENTS CONTAINED IN THIS NOTICE CONTINUE TO HAVE EFFECT.

APPENDIX 1

DEFINITIONS

In this Notice, unless the contrary intention appears –

'EP Act' means the *Environmental Protection Act 1986* (WA)

'CEO' means Chief Executive Officer, Department of Water and Environmental Regulation

'CEO' for the purposes of correspondence means;

Chief Executive Officer
Department of Water and Environmental Regulation
Locked Bag 33
CLOISTERS SQUARE WA 6850
Telephone: (08) 6364 7000
Fax: (08) 63647001
Email: atrium.reception@dwer.wa.gov.au

'Chicken Waste' means dead chickens, chicken faeces, litter from chicken sheds or eggs;

'Contaminated Sites Guidelines' means *Assessment and Management for Contaminated Sites- Contaminated Sites Guidelines, December 2014*. Located at https://www.der.wa.gov.au/images/documents/your-environment/contaminated-sites/guidelines/Assessment_and_management_of_contaminated_sites.pdf

'Controlled Waste Regulations' means *Environmental Protection (Controlled Waste) Regulations 2004* (WA)

'Days' means all days including weekends. When the day or last day for taking any action falls on a Saturday or Sunday the action will be taken on the following business day.

'DWER' means Department of Water and Environmental Regulation.

'Environmental Consultant' means a suitably qualified professional in accordance with Schedule B9 of the NEPM.

'Investigation Report' means the report on the investigation undertaken in compliance with paragraph 2 of this Notice.

'Monitoring Bores' mean the groundwater bores installed under paragraph 4 of this Notice.

'Monitoring Bore Report' means the report on the installation of monitoring bores under paragraph 4.5 of this Notice.

'NATA' means the National Association of Testing Authorities, Australia.

'NEPM' means the *National Environment Protection (Assessment of Site Contamination) Measure 1999* (Cth) available at <https://www.legislation.gov.au/Details/F2013C00288>

'Notice' means this Environmental Protection Notice.

'Owner' means Sheoak Tree Milling Pty Ltd, the registered property owner of the Premises.

'Premises' means Lot 104 on Deposited Plan 60851, Volume 2719 of Folio 680, being the land depicted in Schedule 1 of this Notice.

'Provide in writing' includes by email with an authorised signature.

'Putrescible waste' has the meaning given in the *"Landfill Waste Classification and Waste Definitions 1996 (As amended December 2009)"* and includes animal manures and carcasses.

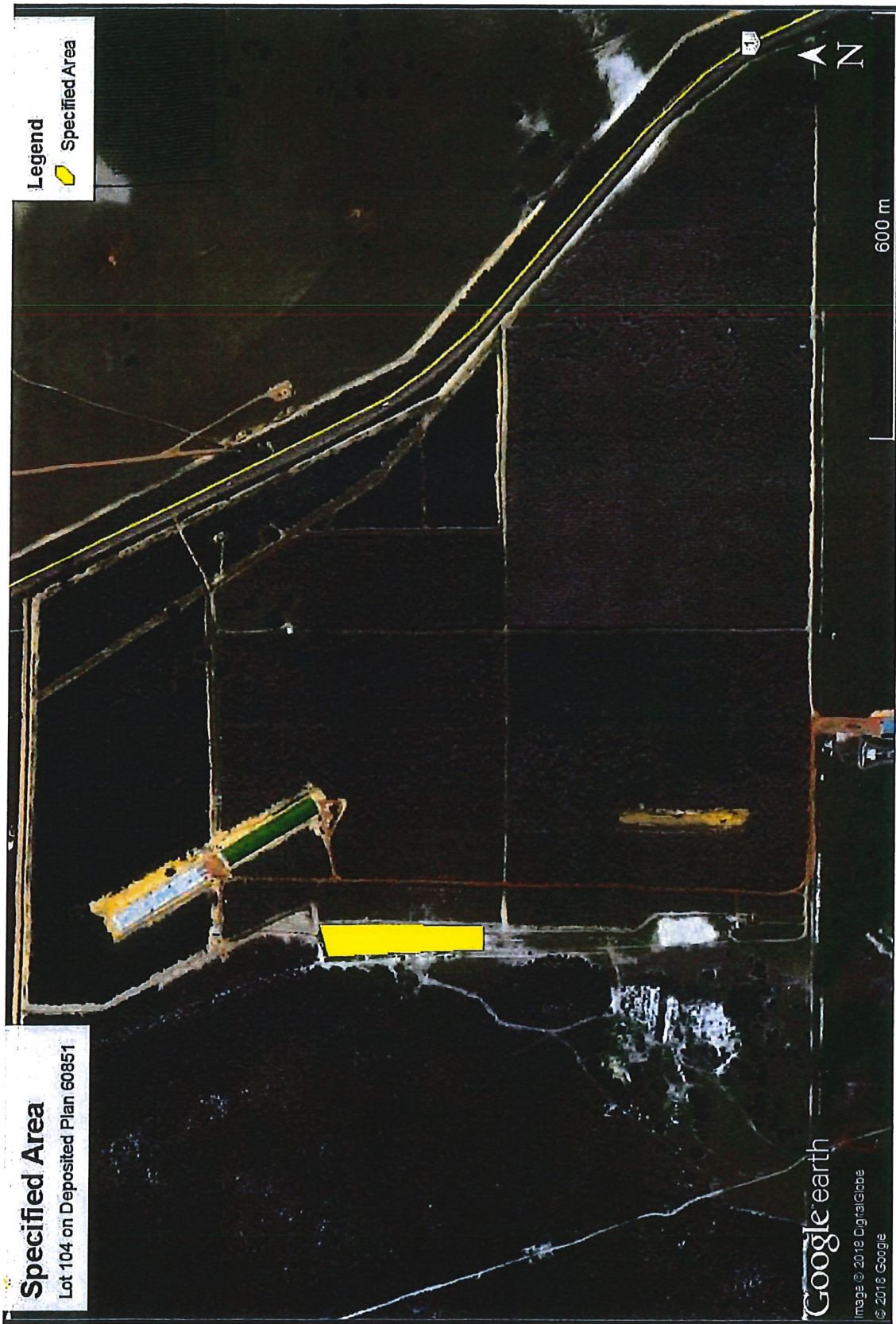
'Regulations' means the *Environmental Protection Regulations 1987 (WA)*

'Remediation Plan' means the plan discussed in paragraph 3 of this Notice.

'Sampling Report' means the report on sampling results from groundwater testing discussed in paragraph 4.15 of this Notice.

'SAQP' means a sampling, analysis and quality plan (SAQP) prepared in accordance with DWER's *Contaminated Sites Guidelines* and *Schedule B2 of NEPM*.

'Specified Area' means the areas of the Premises marked on the aerial imagery in Schedule 2 of this Notice. GPS points of these areas can be provided on request.



Schedule 3 - Longitude and Latitude and Lot 104 Aerial Photograph Locations of Monitoring Bores

Latitude and Longitude:

115.7784, -31.1331,

115.7834, -31.1312,



Legend

Yellow Line – Cadastral boundary of Lot 104

Thin Red Lines – Roads and tracks

Red Dots – Locations of monitoring bores.

This Landgate aerial photograph was taken in 2006, so does not show the excavated area or structures recently built on Lot 104.