



**Australian Government**  
**Department of the Environment**

EPBC Ref: 2012/6378

Mr Simon Ellinor  
Director, Bengalla Mining Company Pty Ltd  
Locked Mail Bag 5  
MUSWELLBROOK NSW 2333

Dear Mr Ellinor

**Decision on approval**  
**Continuation of Bengalla Coal Mine**

I am writing to you in relation to a proposal to continue open cut coal mining operations at the Bengalla Mine. I have considered the proposal in accordance with Part 9 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and have decided to grant an approval to Bengalla Mining Company Pty Limited.

The details of my decision are attached. The proposal must be undertaken in accordance with the conditions specified in the approval. I would appreciate your assistance by informing me when you start the action and who will be the contact person responsible for the administration of the approval decision.

Please note, any plans required as conditions of approval will be regarded as public documents unless you provide sufficient justification to warrant commercial-in-confidence status. You should also note that this EPBC Act approval does not affect obligations to comply with any other laws of the Commonwealth, state or territory that are applicable to the action. Neither does this approval confer any right, title or interest that may be required to access land or waters to take the action.

The department has an active audit program for proposals that have been referred or approved under the EPBC Act. The audit program aims to ensure that proposals are implemented as planned and that there is a high degree of compliance with any associated conditions. Please note that your project may be selected for audit by the department at any time and all related records and documents may be subject to scrutiny. Information about the department's compliance monitoring and auditing program is enclosed.

If you have any questions about this decision, please contact the project manager, Anu Datta, by email to [anu.datta@environment.gov.au](mailto:anu.datta@environment.gov.au), or telephone 02 6274 1898 and quote the EPBC reference number shown at the beginning of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. Stagg'.

Paula Stagg  
Acting Assistant Secretary  
South-Eastern Australia Environment Assessment Branch  
27 May 2015



**APPROVAL**

**Continuation of Bengalla Mine, NSW (EPBC 2012/6378)**

This decision is made under sections 130(1) and 133 of the *Environment Protection and Biodiversity Conservation Act 1999*.

**Proposed action**

**person to whom the approval is granted** Bengalla Mining Company Pty Limited

**proponent's ABN** 32 053 909 470

**proposed action** To continue open cut coal mining operations at the Bengalla Mine, approximately 4 km west of Muswellbrook in the Upper Hunter Valley, NSW for a further 24 years [See EPBC Act referral 2012/6378], including the variation to the action as approved on 18 January 2013 to realign the southern section of the project boundary and expand a portion of the disturbance boundary.

**Approval decision**

Controlling Provision	Decision
Listed threatened species and communities (sections 18 & 18A)	Approved
Water resources/trigger (section 24D & 24E)	Approved

**conditions of approval**

This approval is subject to the conditions specified below.

**expiry date of approval**

This approval has effect until 31 December 2050.

**Decision-maker**

**name and position** Paula Stagg  
(Acting) Assistant Secretary  
South-Eastern Australia Environment Assessments Branch

**Signature**

**date of decision** 27 May 2015



### Proposed Conditions of Approval:

1. The **approval holder** must not clear more than 535 hectares of *White Box-Yellow Box-Blakely's Red Gum Grassy Woodland and Derived Native Grassland* ecological community (Box Gum Woodland) and must limit clearing to within the project disturbance boundary defined at Schedule 1.
2. To mitigate impacts of the action on Box Gum Woodland, the Grey Headed Flying Fox, Large-eared Pied Bat, South-eastern Long-eared Bat, Regent Honeyeater, Swift Parrot and Spotted-tail Quoll, the **approval holder** must prepare and submit, prior to the proposed date of **commencement** of the action, a mine site Vegetation Clearance Protocol and Landscape Management Plan (**VCPLMP**) for **the Minister's** written approval. The **VCPLMP** must:
  - a. Delineate areas to be cleared, describe pre-clearance survey methods, specify actions to minimise fauna impacts and detail vegetation clearance procedures
  - b. Require collection and stockpiling of habitat features important to threatened fauna species for reinstatement in rehabilitation areas
  - c. Require use of native, locally sourced seed for propagation for rehabilitation activities
  - d. Include measures to avoid, suppress and control the spread of plant pathogens (such as *Phytophthora cinnamomi*)
  - e. Specify a two stage clearing protocol where non-habitat trees are cleared 24 hours prior to any habitat trees being cleared, to encourage fauna to move out of an area.

The **approval holder** must not **commence** the action until the **VCPLMP** is approved by **the Minister**. The approved **VCPLMP** must be implemented.

**Note:** The Biodiversity Management Plan required under **NSW Approval** condition 29 may be used to satisfy this condition if it meets the above content and submission requirements.

3. To compensate for the loss of 535 hectares of Box Gum Woodland ecological community and 272 hectares of habitat for the Grey Headed Flying Fox, Large-eared Pied Bat, South-eastern Long-eared Bat, Regent Honeyeater, Swift Parrot and the Spotted-tail Quoll, the **approval holder** must prepare and submit, by 3 September 2015, a Biodiversity Offset Management Plan (**BOMP**) for **the Minister's** written approval. The **BOMP** must:
  - a. Identify those lands described as the Offset Areas at Schedule 2 (Figures 1- 6) of this notice. This must include **offset attributes**, **shapefiles**, textual descriptions and maps to clearly define the location and boundaries of the offset area(s)
  - b. Provide a survey and description of the current condition (prior to any management activities) of the offset areas identified in Condition 3a
  - c. Detail management actions and regeneration and revegetation strategies to be undertaken on the offset areas to improve the ecological quality of these areas, including:
    - (i) a description and timeframe of measures that would be implemented to improve the condition of Box Gum Woodland and habitat for the Grey Headed Flying Fox, Large-eared Pied Bat, South-eastern Long-eared Bat, Regent Honeyeater, Swift Parrot and the Spotted-tail Quoll on the offsets sites;



- (ii) performance and completion criteria for evaluating the management of the offset areas, and criteria for triggering remedial action;
- (iii) a program to monitor and report on the effectiveness of these measures, and progress against the performance and completion criteria;
- (iv) a description of potential risks to the successful implementation of the plan, a description of the measures that will be implemented to mitigate against these risks and a description of the contingency measures that will be implemented if defined triggers arise; and
- (v) details of who would be responsible for monitoring, reviewing, and implementing the plan.

The approved **BOMP** must be implemented. The approved **BOMP** must be published on the **approval holder's** internet web site within 1 month of being approved. The most recently approved version of the **BOMP** must be published on the **approval holder's** internet web site for a period of 5 years after it is approved.

**Note:** The Biodiversity Management Plan required under **NSW Approval** condition 29 may be used to satisfy this condition if it meets the above content and submission requirements.

4. The **approval holder** must secure the lands identified as the *Offset Areas* at Schedule 2 (Figures 1- 6) of this notice as a biodiversity offset, in accordance with **NSW Approval** condition 28.
5. In order to protect **listed threatened species** and **listed threatened ecological communities**, the **approval holder** must undertake rehabilitation activities in accordance with **NSW approval** conditions 44, 45 and 46.
6. The **approval holder** must undertake management and monitoring of water resources in accordance with **NSW approval** conditions 23 to 25.
7. In order to protect water resources, the **approval holder** must undertake rehabilitation activities in accordance with **NSW approval** conditions 44 and 46.
8. Upon request, the approval holder shall supply the groundwater monitoring data for the Bengalla Mine to the Department, NSW Government agencies, operators of the Mt Arthur and/or Mount Pleasant mines or other adjacent mine operators. A protocol for the supply of the data must be included in the **approval holder's** Water Management Plan.
9. The **approval holder** must make available to the **Minister** on request, all plans or programs and any review of plans or programs required under the Project Approval issued for the project under the *Environmental Planning and Assessment Act, 1979* (NSW), including the Biodiversity Management Plan, the Rehabilitation Management Plan and the Water Management Plan, which must include a Site Water Balance, Surface Water Management Plan and Groundwater Management Plan.
10. Within 30 days after the **commencement** of the action, the **approval holder** must advise the **Department** in writing of the actual date of **commencement**.
11. The **approval holder** must maintain accurate records substantiating all activities associated with or relevant to these conditions of approval, including measures taken to implement the **BOMP** and **VCPLMP**, and make them available upon request to the **Department**. Such records may be subject to audit by the **Department** or an independent auditor in accordance with section 458 of the EPBC Act, or used to verify compliance with the conditions of approval. Summaries of audits will be posted on

**the Department's** website. The results of audits may also be publicised through the general media.

12. By the end of March each year, the **approval holder** must publish a report on their website addressing compliance with each of the conditions of this approval, including implementation of the **BOMP** and **VCPLMP** as specified in the conditions. Documentary evidence providing proof of the date of publication must be provided to **the Department** at the same time as the compliance report is published.

**Note:** The Annual Review required under **NSW Approval** condition 4 (of Schedule 5) may be used to satisfy this condition if it meets the above content and submission requirements.

13. Non-compliance with any of the conditions of this approval must be reported to **the Department** within 2 business days of the **approval holder** becoming aware of the non-compliance.
14. Upon the direction of **the Minister**, the **approval holder** must ensure that an independent audit of compliance with the conditions of approval is conducted and a report submitted to **the Minister**. The independent auditor must be approved by **the Minister** prior to the commencement of the audit. Audit criteria must be agreed to by **the Minister** and the audit report must address the criteria to the satisfaction of **the Minister**.
15. If the **approval holder** wishes to carry out any activity other than in accordance with a Plan as specified in the conditions, the **approval holder** must submit to **the Department** for **the Minister's** written approval a revised version of that Plan. The **approval holder** must not commence the varied activity until **the Minister** has approved the varied Plan in writing. **The Minister** will not approve a varied Plan unless the revised Plan would result in an equivalent or improved environmental outcome over time. If **the Minister** approves the revised Plan, that Plan must be implemented in place of the Plan originally approved.
16. If **the Minister** believes that it is necessary or convenient for the better protection of listed threatened species and ecological communities to do so, **the Minister** may request that the **approval holder** make specified revisions to a Plan specified in the conditions and submit the revised Plan for **the Minister's** written approval. The **approval holder** must comply with any such request. The revised approved Plan must be implemented. Unless **the Minister** has approved the revised Plan then the **approval holder** must continue to implement the Plan originally approved, as specified in the conditions.
17. If, at any time after 5 years from the date of this approval, the **approval holder** has not **commenced** the action, then the **approval holder** must not **commence** the action without the written agreement of **the Minister**.



## **Definitions**

**Approval Holder** means the person to whom the approval is granted or any person acting on their behalf, or to whom the approval is transferred under section 145B of the EPBC Act.

**BOMP**, means a Biodiversity Offset Management Plan.

**Commencement**, of the action means the first instance of earthworks, vegetation removal or construction of any infrastructure, excluding fences and signage, associated with the proposed action. Commencement does not include:

- minor physical disturbance necessary to undertake pre-clearance surveys or establish monitoring programs or geotechnical investigations; or
- activities that are critical to commencement that are associated with mobilisation of plant and equipment, materials, machinery and personnel prior to the start of development only if such activities will have no adverse impact on matters of national environmental significance.

**The Department** is the Australian Government Department responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999*.

**Listed threatened ecological communities**, means ecological communities included in the list referred to in section 181 of the EPBC Act.

**Listed threatened species**, means a native species included in the list referred to in section 178 of the EPBC Act.

**The Minister** is the Commonwealth minister responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999* and includes a delegate of **the Minister**.

**The NSW approval** of the action is the Development Consent issued under Section 89E of the *Environmental Planning & Assessment Act 1979* (NSW) in relation to application number SSD-5170, on 3 March 2015.

**Offset attributes**, means an '.xls' file capturing relevant attributes of the Offset Area, including the EPBC reference ID number, the physical address of the offset site, coordinates of the boundary points in decimal degrees, the EPBC protected matters that the offset compensates for, any additional EPBC protected matters that are benefiting from the offset, and the size of the offset in hectares.

**Shapefiles**, means an ESRI Shapefile containing '.shp', '.shx' and '.dbf' files and other files capturing attributes of the Offset Area, including the shape, EPBC reference ID number and EPBC protected matters present at the relevant site. Attributes should also be captured in '.xls' format.

**VCPLMP**, means a Vegetation Clearance Protocol and Landscape Management Plan





- Legend**
- Project Boundary
  - Project Disturbance Boundary
- Vegetation Community**
- Upper Hunter White Box -Ironbark Grassy Woodland (EPBC CEEC; TSC EEC)
  - Grey Box/White Box Intergrade Grassy Woodland (EPBC CEEC; TSC EEC)
  - Derived Native Grassland (EPBC CEEC; TSC EEC)
  - Central Hunter Ironbark - Spotted Gum Forest (TSC Act EEC)
  - Narrebeen Footstopes Slaty Box Woodland (TSC Act VEC)
  - Derived Native Grassland (Slaty Box)
  - Hunter Floodplain Red Gum Woodland Complex (TSC Act EEC)
  - Upper Hunter Hills Exposed Ironbark Woodland
  - Upper Hunter Hills Exposed Ironbark Woodland
  - Derived Native Grassland
  - Low Diversity Derived Native Grassland/ Exotic Pasture
  - Tree and Shrub Plantation



Image Source:  
BMC2204/2010

Schedule 1 - Figure 1. Bengalla Mine Continuation Project - Project Disturbance Boundary

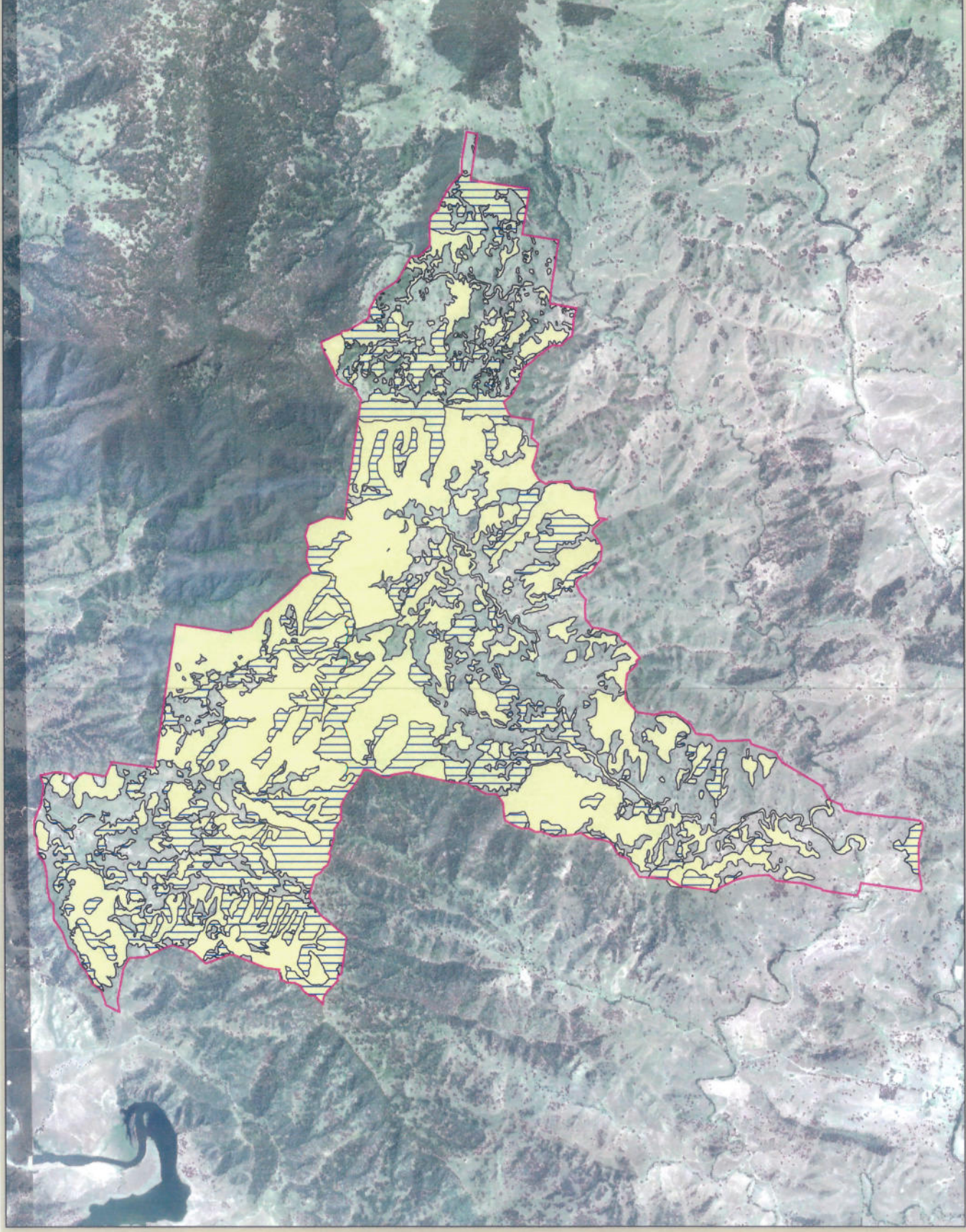




**Legend**

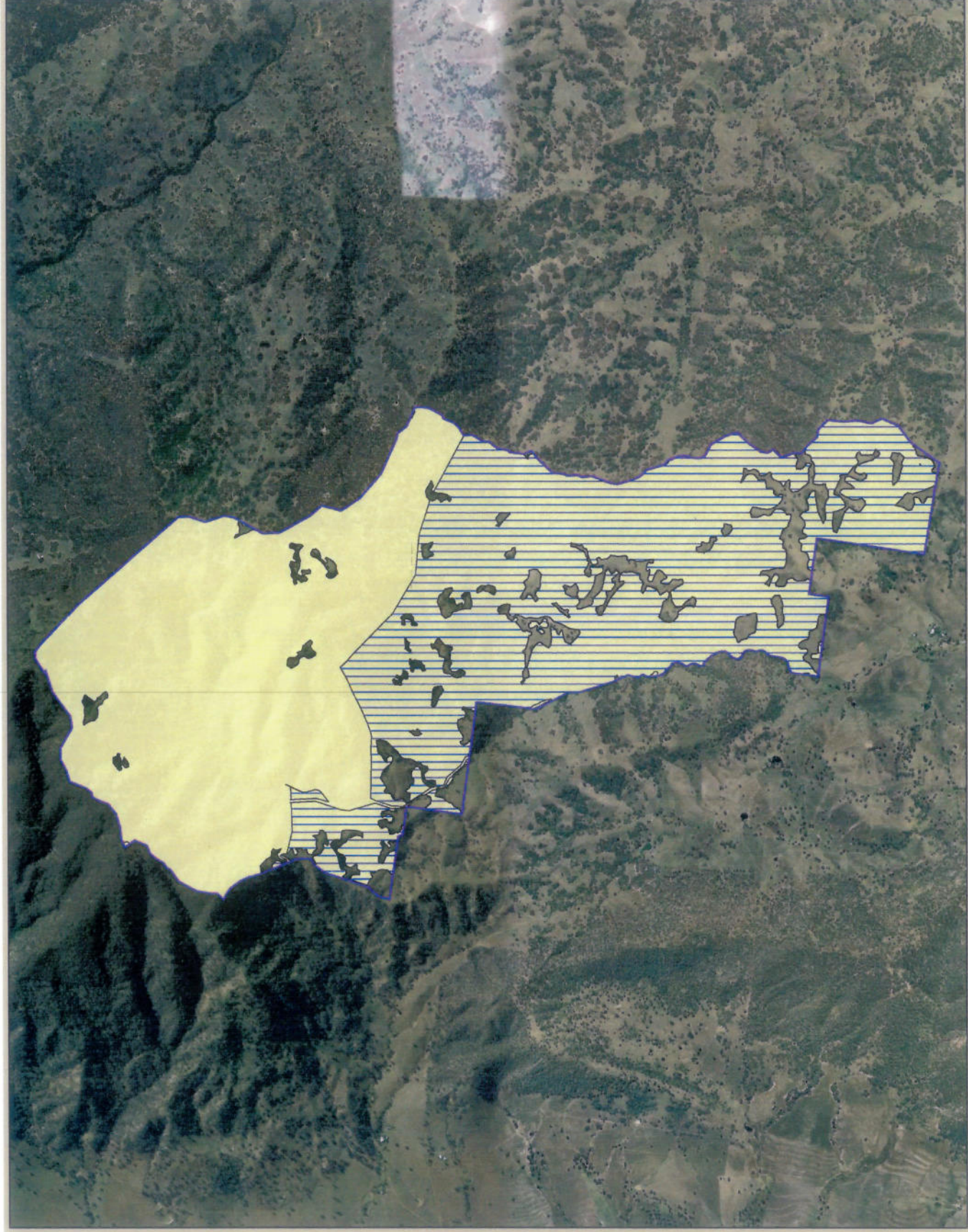
-  Kenelea Properties Biodiversity Offset Area
-  Threatened Species Habitat (EPBC Act)
  - Regent Honeyeater, Swift Parrot,
  - Grey-headed Flying Fox, Spotted-tailed Quoll Habitat
-  Large-eared Pied Bat and Greater Long-eared Bat Habitat

Image Source:  
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Schedule 2 - Figure 1. EPBC Act Threatened Species Habitat within Kenelea Properties Offset Area





- Legend**
- Black Mountain Offset Area
  - Threatened Species Habitat (EPBC Act)  
Regent Honeyeater, Swift Parrot,  
Grey-headed Flying Fox, Spotted-tailed Quoll Habitat
  - Large-eared Pied Bat and Greater Long-eared Bat Habitat

Image Source:  
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Schedule 2 - Figure 2. EPBC Act Threatened Species Habitat within Black Mountain Offset Area

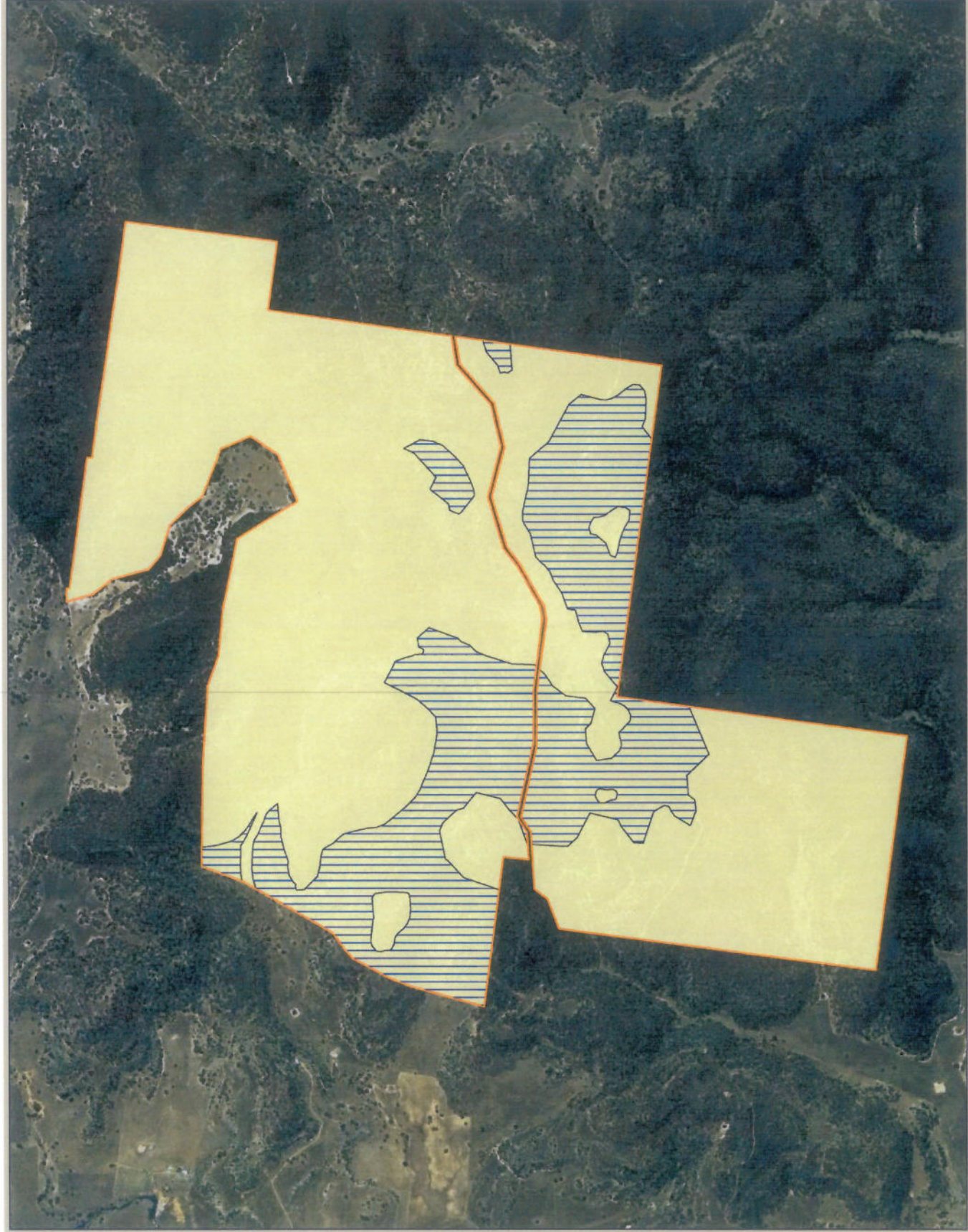






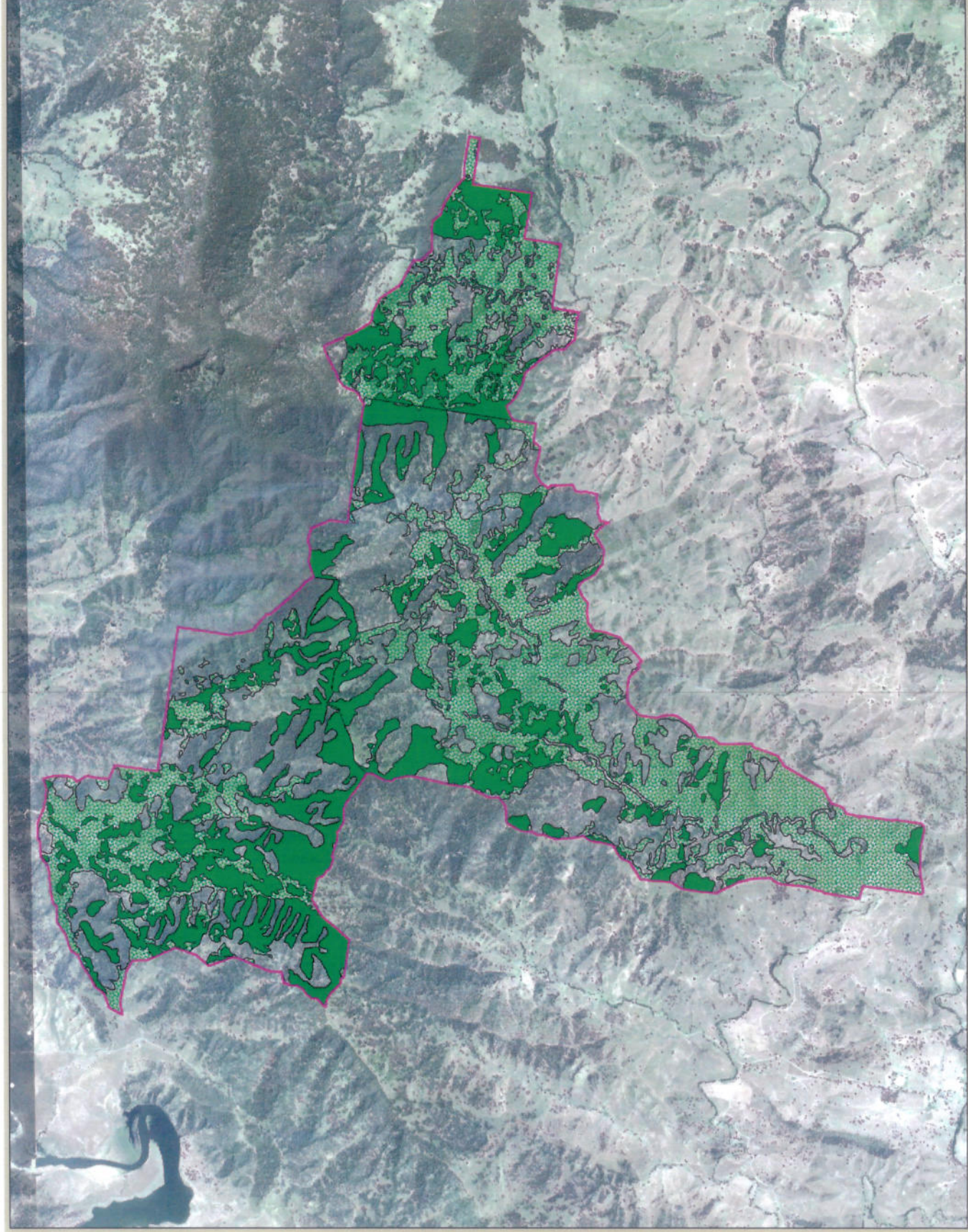
- Legend**
-  Merriwa River Offset Area
  - Threatened Species Habitat (EPBC Act)**
    -  Regent Honeyeater, Swift Parrot, Grey-headed Flying Fox, Spotted-tailed Quail Habitat
    -  Large-eared Pled Bat and Greater Long-eared Bat Habitat

Image Source:  
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Schedule 2 - Figure 3- EPBC Act Threatened Species Habitat within Merriwa River Offset Area





- Legend**
- Kenelea Properties Biodiversity Offset Area
  - Box Gum Woodland and Derived Native Grassland
  - White Box - Yellow Box - Blakely's Red
  - Gum Grassy Woodland
  - White Box - Yellow Box - Blakely's Red
  - Gum Derived Native Grassland

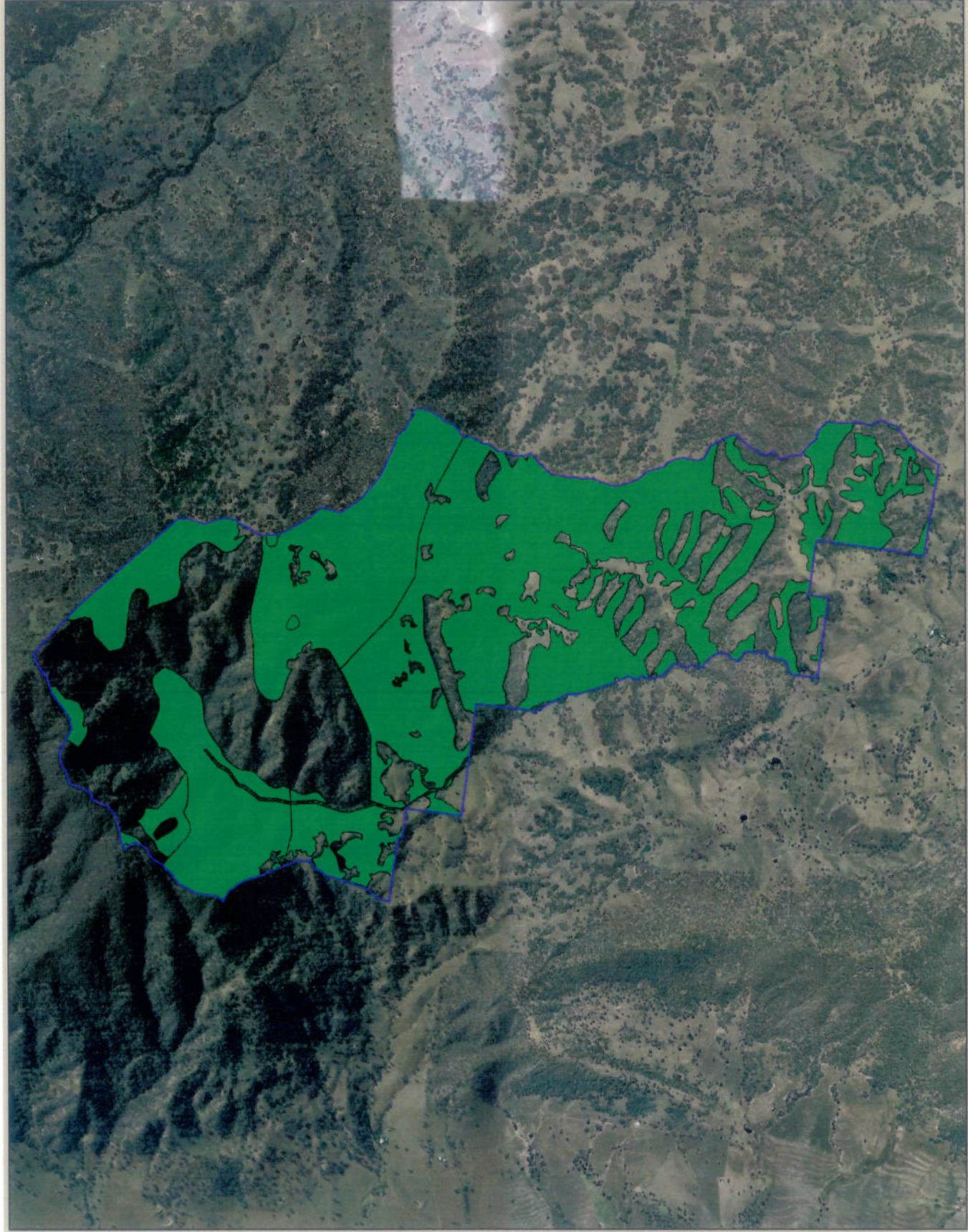
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Schedule 2 - Figure 4. Box Gum Woodland and Derived Native Grassland (C/IEEC) within Kenelea Properties Biodiversity Offset Area







- Legend**
- Black Mountain Offset Area
  - Box Gum Woodland
  - White Box - Yellow Box - Blakely's Red
  - Gum Grassy Woodland

Image Source:  
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Schedule 2 - Figure 5. Box Gum Woodland (CIEEC) within Black Mountain Offset Area

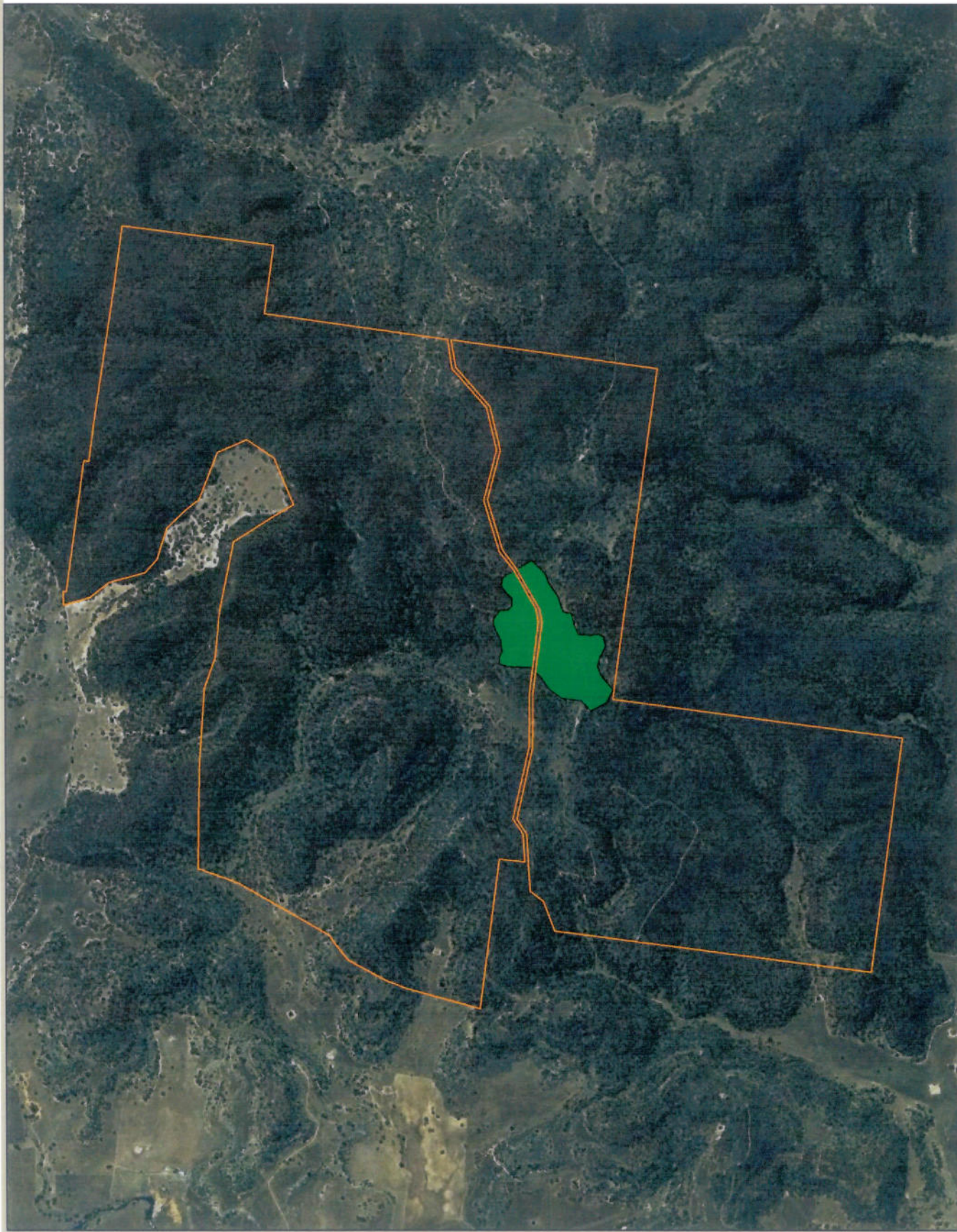




**Legend**

-  Merriwa River Offset Area
-  Box Gum Woodland
-  White Box - Yellow Box - Blakely's Red Gum Grassy Woodland

Image Source:  
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**Schedule 2 - Figure 6. Box Gum Woodland (C/EEC) within Merriwa River Offset Area**