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Land and Environment Court of New South Wales

Your Ref:



4 May 2017

NOTICE OF ORDERS MADE

Case number Case title 2016/00313478 v Chief Executive, Office of the Environment and Heritage

On 4 May 2017 the following orders (and/or directions) were made:

The final orders to give effect to the parties' agreement under s34(3) of the Land and Environment Court Act 1979 are:

(1) The appeal is upheld.

(2) Revokes the Direction to Carry Out Remedial Work dated 21 September 2016 given by as delegate for the Chief Executive of the Office of Environment and Heritage under section of the National Parks and Wildlife Act 1974 to the Applicant.

(3) In substitution thereof, directs the Applicant to carry out the remedial work specified in the direction for remedial work at Annexure A to these orders in the manner specified and within the time specified.

(4) No order is made as to costs.

For the Registrar

Annexure 'A' Conditions of Consent

ATTACHMENT A TO THE AGREEMENT BETWEEN THE PARTIES MADE 21 APRIL 2017

You, Mr **Exercise** being the landholder of of Lot 191 DP 751250, at 85 Silica Road Bargo ('the property"), are directed under section 91K of the National Parks and Wildlife Act 1974 to perform each of the following remedial works on the property within the time specified, if any, for each of the work, or where no time is specified, for a period of 10 years from the date of this direction.

1 EXCLUSION OF REMEDIATION AREA

Fencing

- 1.1 Within 90 days of the date of the Remediation Direction the Landholder must construct a fence around the boundary of the Remediation Area as shown on the map at Attachment 1 for the purposes of excluding stock and poultry ("the fence").
- 1.2 The fence must be constructed as follows:
 - a) 5 strand wire of 3.5mm size;
 - b) the highest and lowest most strands must be constructed of plain wire (not barbed or similar material);
 - c) the middle 3 strands must be barbed wire;
 - d) the bottom strand is to be not less than 20 cm above ground level;
 - e) steel posts must be installed every 3.5 to 5 metres; and
 - f) any gates in the fence must be constructed of galvanised steel with self-closing locks.
- 1.3 If poultry are kept on the property then the fence and gates must also be fitted with poultry-proof wire mesh.
- 1.4 The Landholder must ensure that all gates in the fence:
 - a) remain closed and locked at all times; or
 - b) are open only to allow access that is not inconsistent with the works specified by this Remediation Direction .
- 1.5 If at any time the Landholder becomes aware that the fence does not continue to meet the requirements referred to in conditions 1.2 and 1.3, the Landholder must replace or repair the fence as soon as practicable after becoming aware that it does not meet the requirements, and in all events within 7 days of the Landholder becoming so aware, to ensure it meets the requirements referred to in conditions 1.2 and 1.3.
- 1.6 The Landholder 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 the fence continues to meet the requirements referred to in conditions 1.2 and 1.3.

Waste Removal

1.7 The Landholder must remove all waste from the Remediation Area within 90 days of the date of the Remediation Direction

Stock and Poultry management

- 1.8 The Landholder must exclude stock and poultry from the Remediation Area from the date that the fence is completed.
- 1.9 Any stock and poultry found within the Remediation Area after the construction of the fence must be removed by the Landholder as soon as practicable and in any event within 7 days of the Landholder becoming so aware.
- 1.10 The Landholder must inspect the Remediation Area for the purposes of determining whether stock or poultry are present within the Remediation Area.
- 1.11 The inspections required by Clause 1.10 must occur quarterly for the first two years after the date of this Remediation Direction, biannually for the third, fourth and fifth years after the date of this Remediation Direction and annually for the sixth to tenth years after the date of this Remediation Direction.
- 1.12 If at any time stock or poultry are found within the Remediation Area the Landholder must inspect the fence as soon as practicable and in any event within 1 day of the landholder becoming so aware, to determine whether it continues to meet the requirements referred to in conditions 1.2 and 1.3.

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

- 2.1 If at any time any exotic species, commercial crops or non-native plant species are found within the Remediation Area, the Landholder must, as soon as practicable and in any event within 30 days of becoming so aware, destroy all such exotic species, commercial crops or non-native plant species by non-mechanised, non-chemical means.
- 2.2 The Landholder must inspect the Remediation Area for the purposes of determining whether exotic species, commercial crops or non-native plant species are present within the Remediation Area.
- 2.3 The inspections required by clause 2.2 shall include taking photographs of the Remediation Area from the Photo Monitoring Points shown in Attachment 2. The photographs shall be taken from the Photo Monitoring Points in four directions to the north, south, east and west of each point, except where that direction does not provide a view of the Remediation Area.
- 2.4 The inspections required by Clause 2.2 and the photography required by Clause 2.3 must occur quarterly for the first two years after the date of this Remediation Direction, biannually for the third, fourth and fifth years after the date of this Remediation Direction and annually for the sixth to tenth years after the date of this Remediation Direction.

3 GRAZING MANAGEMENT.

- 3.1 The Landholder must exclude pest herbivores from using the Remediation Area
- 3.2 Any pest herbivore found within the Remediation Area after construction of the fence must be removed by the Landholder as soon as practicable, and in any event within 30 days of the Landholder becoming so aware.
- 3.3 The Landholder must inspect the Remediation Area for any evidence that pest herbivores have entered the Remediation Area.
- 3.4 The inspections required by Clause 3.3 must occur quarterly for the first two years after the date of the Remediation Direction, biannually for the third, fourth and fifth years after the date of the Remediation Direction and annually for the sixth to tenth years after the date of this Remediation Direction.
- 3.5 If, at any time, any pest herbivores are found within the Remediation Area, or if the Landholder

becomes aware that pest herbivores are in the Remediation Area, the Landholder must remove such pest herbivores from the Remediation Area as soon as practicable and in any event within 7 days of the Landholder becoming so aware.

- 3.6 If, at any time, rabbit warrens are found within the Remediation Area, or if the Landholder becomes aware that rabbit warrens are in the Remediation Area, the Landholder must destroy such rabbit warrens as soon as practicable and in any event within 7 days of the Landholder becoming so aware.
- 3.7 If, at any time, there is any evidence that any pest herbivores have entered the Remediation Area, or if the Landholder becomes aware of such evidence, the Landholder must conduct a thorough inspection of the Remediation Area to determine whether any pest herbivores or rabbit warrens are within the Remediation Area.

4 RECORDS

- 4.1 The following records must be kept by the Landholder in respect of each of the inspections required by this direction:
 - 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.
- 4.2 The following records must be kept by the Landholder in respect of all 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.
- 4.3 All records required to be kept by this notice must be:
 - a) In a legible form, or in a form that can readily be reduced to a legible form;
 - b) Kept for at least 4 years after the inspection or event to which they relate took place;
 - c) Produced in a legible form to any authorised officer on request of the authorised officer; and
 - d) Be true, accurate and correct.

5 SITE ECOLOGIST

- 5.1 The Landholder shall engage a Site Ecologist to prepare and submit the Monitoring Report referred to in Clauses 6.4 and 6.5.
- 5.2 The Site Ecologist must have a minimum qualification of a Bachelor degree in terrestrial ecology, or similar field, and at least three years' experience in ecology within the Sydney region.
- 5.3 The Landholder shall provide the results of all inspections and photography referred to in Clauses 1.6, 1.10, 2.2, 2.3 and 3.3 to the Site Ecologist within 14 days of the dates of the inspections and photography.
- 5.4 Within 14 days of receipt of the information in Clause 5.3, the Site Ecologist shall inform the Landholder in writing of:
 - a) Whether the Landholder is complying with the monitoring requirements;
 - b) The presence of any weeds, signs of human or stock disturbance or pest herbivores.
- 5.5 Copies of the reports required by Clause 5.4 shall be provided to OEH as attachments to the Monitoring Report required by Clause 6.4.

6 **REPORTING**

- 6.1 The Landholder must prepare and submit an Initial Works Report to:
 - a) By Registered Post to: Team Leader Compliance and Regulation Regional Operations, Greater Sydney Office of Environment and Heritage PO Box 644 Parramatta NSW 2124
 - or
 - b) By courier or by hand to:

Team Leader, Compliance and Regulation Regional Operations, Greater Sydney Office of Environment and Heritage Level 6, 10 Valentine Avenue Parramatta NSW 2150

By 90 days of the date of this Remediation Direction.

- 6.2 The Initial Works Report must include but not be limited to:
 - a) The date of completion for "the fence" in accordance with condition 1.1, 1.2 and 1.3 of this direction;
 - b) Evidence that all waste had been removed from the remediation area; and
 - c) All weed control activities undertaken in accordance with condition 2.1 of this direction.
 - d) Results of the first quarterly monitoring inspections and reporting carried out in accordance with Clauses 1.6, 1.11, 2.3, 3.4, 5.3 and 5.4 of this Remediation Direction.
- 6.3 The Initial Works Report must be prepared in the format at "Attachment 3: Initial Works Report".
- 6.4 The Landholder must have prepared and submit a Monitoring Report to:
 - a) By Registered Post to:

Team Leader Compliance and Regulation Regional Operations, Greater Sydney Office of Environment and Heritage PO Box 644 Parramatta NSW 2124

- or
- b) By courier or by hand to:

Team Leader, Compliance and Regulation Regional Operations, Greater Sydney Office of Environment and Heritage Level 6, 10 Valentine Avenue Parramatta NSW 2150

By 12 months of the date of this Remediation Direction and each year thereafter, a report for each "reporting period" that occurred within the preceding 12 month period. The Monitoring Report must include but not be limited to:

- a) A summary of the regeneration work or activities undertaken during the reporting period to allow the Remediation Area to be restored in accordance with this direction; and
- b) Determinations of all inspections carried out in accordance with this direction during the reporting period.

- c) Digital copies of photographs taken for the purposes of Clause 2.3 of this Remediation Direction
- 6.5 The Monitoring Report must be prepared in the format at "Attachment 4: Monitoring Report".

DEFINITIONS AND INTERPRETATIONS

- A. Words and expressions have the same meaning as words and expression used in the *National Parks* and *Wildlife Act 1974*, except where a word is specifically defined in this Dictionary.
- B. In this direction the following definitions apply:

"authorised officer"	Means the Chief Executive or a person appointed as an authorised officer for the time being under section 156B of the Act
"The Act"	Means the National Parks and Wildlife Act 1974
"CMA Sub-Region"	Means Sub-regions of NSW Catchment Management Authority Areas as identified in Appendix A of the Environmental Outcomes Assessment Methodology as in force and as published in the Gazette on 4 March 2011.
"Damage"	Means damage to anything in or on the land (such as an object or place of cultural value.
"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</i> $1 - 4$, University of NSW Press.
	For the purposes of this direction exotic species includes but is not limited to: <i>Rubus fruticosus</i> aggregate species (Blackberry), <i>Hypericum perforatum</i> (St Johns Wort), <i>Rosa rubiginosa</i> (Sweet Briar), <i>Bidens pilosa</i> (Cobbler's Pegs), <i>Conyza bonariensis</i> (Flaxleaf Fleabane), <i>Conyza sumatrensis</i> (Tall Fleabane), <i>Gomphocarpus fruticosus</i> (Narrow-leaved cotton bush), <i>Lactuca saligna</i> (Willow-leaved Lettuce), <i>Malva parviflora</i> (Small-flowered Mallow), <i>Marrubium vulgare</i> (Horehound), <i>Senecio madagascariensis</i> (Fireweed), <i>Solanum nigrum</i> (Blackberry Nightshade) and <i>Verbascum thapsus</i> subspecies <i>thapsus</i> (Great Mullein).
"Landholder"	Means Mr
"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 outlined in red and marked "Remediation Area" being parts of Lot 191 DP 751250.
"Reporting period"	Means each annual period commencing from the date of the Remediation Direction for the duration of this direction.
"Poultry"	Means all domesticated fowl including, but not limited to, chickens, ducks and geese.
"Stock"	Means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, pigs and goats). It does not include native

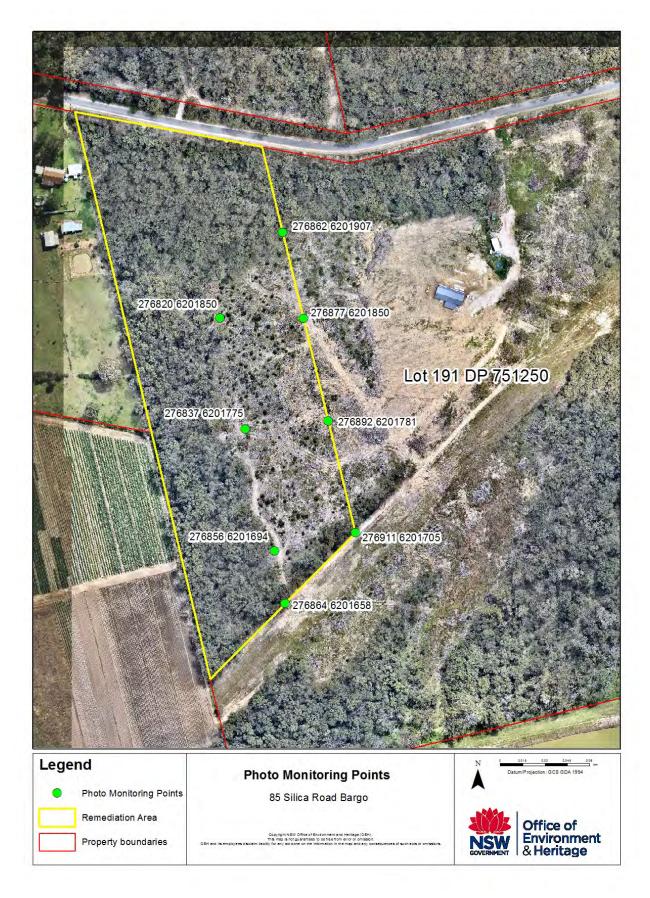
	wildlife.
"Waters"	Means a stream, creek, river, estuary, dam, lake or reservoir.

Attachments:

- 1. Map of the Remediation Area
- 2. Map of the Photo Monitoring Points
- 3. Initial works report pro-forma
- 4. Monitoring report pro-forma

ATTACHMENT 1 – MAP OF THE REMEDIATION AREA





ATTACHMENT 2: PHOTO MONITORING POINTS

ATTACHMENT 3 - INITIAL WORKS REPORT

LANDHOLDER

AS PER REPORTING REQUIREMENTS SET OUT IN THIS REMEDIATION DIRECTION, THE INITIAL WORKS REPORT MUST BE RECEIVED BY OEH BY 3 MONTHS FROM THE DATE OF THE DIRECTION

Failure to submit this Initial Works Report by 3 months from the date of the Direction may result in:

- the issue of a Penalty Notice for \$1650 (individuals) or \$3300 (corporations);
- OR
- prosecution.

WARNING AND INFORMATION

It is an offence against section 91L of the *National Parks and Wildlife Act 1974* to fail to comply with a Direction. The maximum penalty that a court may impose for this offence is, for a corporation, \$220,000 plus \$22,000 for each day the offence continues and for an individual, \$110,000 plus \$11,000 for each day the offence continues.

Please submit your completed Initial Works Report by Registered Post, to:

Team Leader Compliance and Regulation Regional Operations, Greater Sydney Office of Environment and Heritage PO Box 644 Parramatta NSW 2124

or by courier or by hand to:

Team Leader, Compliance and Regulation Regional Operations, Greater Sydney Office of Environment and Heritage Level 6, 10 Valentine Avenue Parramatta NSW 2150

A Initial Works Summary

Please provide the following information regarding compliance with the Remediation Direction issued to

The Remediation Direction relates to the following area of land: Lot 191 DP 751250, at 85 Silica Road Bargo ('the property").

Please:

- tick (✓) the appropriate box where a question is asked; and
- provide details of activities undertaken; and
- provide dates as appropriate.

Note: the definitions in this Report are the same as in the Remediation Direction.

FENCING		
What date was construction of the fencing completed?	Date	
If the fence was not constructed by the date specified in 1.1 of the Remediation provide an explanation below.	Direction,	please
Has the fencing been constructed according to the requirements in 1.2 of the Remediation Direction? (tick \checkmark Yes or No)	Yes	No
If No , provide an explanation below.		
STOCK AND POULTRY MANAGEMENT		
Have all stock and poultry been excluded from the Remediation Area?	Yes	No
If all stock and poultry were not excluded from the Remediation Area by the dat the Remediation Direction, please provide an explanation below.	te specified	in 1.7 of

B Signature and Certification

This Initial Works Report may only be signed by a person(s) with legal authority to sign it as set out in the categories below. **Please tick (\checkmark) the box** next to the category that describes how this Initial Works Report is being signed.

If you are uncertain about who is entitled to sign or which category to tick, please contact us on telephone 9995 6811.

If the Landholder is:	the	Initial Works Report must be signed and certified:
an individual		by the individual Landholder
a company		by affixing the common seal in accordance with Corporations Act 2001, or
		by 2 directors, or
		by a director and a company secretary, or
		if a proprietary company that has a sole director who is also the sole company secretary – by that director.

I/We declare and certify that the information in this Initial Works Report is true and correct

SIGNATURE:
NAME: (printed)
POSITION:
DATE://

SEAL (if signing under seal)

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ATTACHMENT 4 - MONITORING REPORT

LANDHOLDER	
REPORTING PERIOD	/ to/

AS PER REPORTING REQUIREMENTS SET OUT IN THIS REMEDIATION DIRECTION, THE MONITORING REPORT MUST BE RECEIVED BY OEH BY 12 MONTHS FROM THE DATE OF REMEDIATION DIRECTION

Failure to submit this Monitoring Report by 12 months from the date of the Remediation Direction may result in:

the issue of a Penalty Notice for \$1650 (individuals) or \$3300 (corporations);

OR

prosecution.

WARNING AND INFORMATION

It is an offence against section 91L of the *National Parks and Wildlife Act 1974* to fail to comply with a Direction. The maximum penalty that a court may impose for this offence is, for a corporation, \$220,000 plus \$22,000 for each day the offence continues and for an individual, \$110,000 plus \$11,000 for each day the offence continues.

Please submit your completed Initial Works Report by Registered Post, to:

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or by courier or by hand to:

Team Leader, Compliance and Regulation Regional Operations, Greater Sydney Office of Environment and Heritage Level 6, 10 Valentine Avenue Parramatta NSW 2150

A Monitoring Summary

Please provide the following information regarding compliance with the Remediation Direction issued to

The Remediation Direction relates to the following area of land: Lot 191 DP 751250, at 85 Silica Road Bargo ("the property").

Please:

- tick (1) the appropriate box where a question is asked; and
- provide details of activities undertaken; and
- provide dates as appropriate.

Note: the definitions in this Report are the same as in the Remediation Direction.

FENCING				
Inspections Have inspections of the fence around the 1.6 of the Remediation Direction? (tick \checkmark		place as required by	Yes	No 🗖
Dates of fencing inspections				
If you answered No above provide an exp	lanation below.			
Fence condition Does the fence meet the requirements specified in 1.1, 1.2 and 1.3 of the Remediation direction (tick \checkmark Yes or No)			Yes	No
	ecified in 1.1, 1.2 and 1.3	3 of the Remediation		
	ecified in 1.1, 1.2 and 1.3	3 of the Remediation		No
direction (tick ✓ Yes or No)	nd locked as required by		Yes	No
direction (tick ✓ Yes or No) Gates Have you ensured that gates are closed a Remediation Direction? (tick ✓ Yes or No) Works to fence	nd locked as required by	/ 1.4 of the	Yes	No No
direction (tick ✓ Yes or No) Gates Have you ensured that gates are closed a Remediation Direction? (tick ✓ Yes or No)	nd locked as required by	/ 1.4 of the	Yes	
direction (tick ✓ Yes or No) Gates Have you ensured that gates are closed a Remediation Direction? (tick ✓ Yes or No) Works to fence Has work been undertaken to replace or re-	nd locked as required by epair the fence as requir	/ 1.4 of the	Yes Yes Yes	
direction (tick ✓ Yes or No) Gates Have you ensured that gates are closed a Remediation Direction? (tick ✓ Yes or No) Works to fence Has work been undertaken to replace or re Remediation Direction? (tick ✓ Yes or No)	nd locked as required by epair the fence as requir	/ 1.4 of the	Yes Yes Yes	No
direction (tick ✓ Yes or No) Gates Have you ensured that gates are closed a Remediation Direction? (tick ✓ Yes or No) Works to fence Has work been undertaken to replace or re Remediation Direction? (tick ✓ Yes or No)	nd locked as required by epair the fence as requir	/ 1.4 of the	Yes Yes Yes	No
direction (tick ✓ Yes or No) Gates Have you ensured that gates are closed a Remediation Direction? (tick ✓ Yes or No) Works to fence Has work been undertaken to replace or re Remediation Direction? (tick ✓ Yes or No)	nd locked as required by epair the fence as requir	/ 1.4 of the	Yes Yes Yes	No
direction (tick ✓ Yes or No) Gates Have you ensured that gates are closed a Remediation Direction? (tick ✓ Yes or No) Works to fence Has work been undertaken to replace or re Remediation Direction? (tick ✓ Yes or No)	nd locked as required by epair the fence as requir	/ 1.4 of the	Yes Yes Yes	No

STOCK MANAGEMENT				
Inspections			Yes	No
Have inspections for stock and poultry in the 1.10 of the Remediation Direction? (tick \checkmark Ye		n place as required by		
Dates of stock inspections				
If there have been no inspections for stock a below.	nd poultry in the Remed	iation Area, provide an	explanatio	'n
Was any stock or poultry present within the F	Remediation Area? (tick	✓ Yes or No)	Yes	No
Provide details of the type and amount of stock present				
Removal Have stock and poultry been removed from t	he Remediation Area? (tick ✓ Yes or No)	Yes	No
Provide details of how stock entered the Remediation Area.				
Provide details of the method of removal and (including dates)	l the amount and type of	f stock removed	Date(s) c removal	of

WEED, EXOTIC SPECIES, COMMERCIAL	CROP AND NON-NATI	VE PLANT MANAGEM	IENT	
Inspections			Vaa	No
Have inspections for exotic species, commer Remediation Area taken place as required by Yes or No)			Yes	No
Dates of weed inspections				
If there have not been inspections, provide a	n explanation below.			
			1	
Were there any exotic species, commercial of Remediation Area? (tick ✓ Yes or No)	crops or non-native plant	s present in the	Yes	No
If there were exotic species, commercial crop the species present and their extent.	ps or non-native plants p	resent in the Remediat	ion Area, o	describe
Have any exotic species, commercial crops of Remediation Area as required by 2.1 of the F			Yes	No
Provide details of the method of destroying v type of weeds destroyed or removed.	veeds or removal of wee	ds (including dates) an	d the amo	unt and
Provide details of the method of destroying of crops or non-native plants and the amount a and non-native plants destroyed or removed	and type of exotic specie		Date(s)	

GRAZING MANAGEMENT				
Inspections Have inspections of pest herbivores in the Remediation Area taken place as required by condition 4.3 of the Remediation Direction? (tick \checkmark Yes or No)			Yes	No
Dates of pest herbivore inspections				
If there have been no inspections of pest he below.	erbivores in the Remedia	ation Area, provide an	explanatic	n
Provide details of the type and number of p	est herbivores present			
Provide details of the method of destroying herbivores destroyed or removed (including		vores and the pest	Date(s)	

B Signature and Certification

This Monitoring Report may only be signed by a person(s) with legal authority to sign it as set out in the categories below. Please tick (\checkmark) the box next to the category that describes how this Monitoring Report is being signed.

If you are uncertain about who is entitled to sign or which category to tick, please contact us on telephone 9995 6811.

If the Landholder is:	the Monitoring Report must be signed and certified:
an individual	by the individual Landholder
a company	by affixing the common seal in accordance with <i>Corporations Act 2001</i> , or
	by 2 directors, or
	by a director and a company secretary, or
	if a proprietary company that has a sole director who is also the sole company secretary – by that director.

I/We declare and certify that the information in this Monitoring Report is true and correct

SIGNATURE:	SIGNATURE:
NAME: (printed)	NAME: (printed)
POSITION:	POSITION:
DATE://	DATE://

SEAL (if signing under seal)