

Remediation Order

ORDER ISSUED TO:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Reference: DOC19/552318-2
Issue Date: 1 September 2020

BY: Email – [REDACTED]

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

Basis for issuing Remediation Order

The Department of Planning, Industry and Environment (the Department) has responsibility for the enforcement of the Biodiversity Conservation Act 2016 (BC Act), the now repealed Native Vegetation Act 2003 (NV Act), and the Regulations associated with both Acts. Although the NV Act was repealed on 25 August 2017, any offence committed against the NV Act prior to that date remains subject to regulatory actions by the Department. Clause 58 of *Biodiversity Conservation (Savings and Transitional) Regulation 2017 (BC (S&T) Regulation)* enables the provisions of the NV Act relating to proceedings for an offence, penalty notices, court orders and remediation orders to continue to apply.

[REDACTED] is the current owner of [REDACTED] [REDACTED]
[REDACTED], in the Walgett Local Government Area (the **Property**).

Information and evidence obtained, including an assessment of aerial and satellite imagery and a site inspection undertaken by ecological experts, supports that damage, caused by clearing native vegetation including threatened ecological communities, occurred on the Property between July 2013 and November 2015.

At all material times, it was an offence against section 12 of the NV Act for a person to carry out or authorise clearing of native vegetation, except in accordance with a development consent granted in accordance with the NV Act or a property vegetation plan.

The information and evidence obtained supports that a total of 423 hectares of clearing occurred in the Areas of interest marked on the map at **Attachment A**.

The cleared trees and other native vegetation comprised a plant community type described as “Coolibah – River Coolibah – Lignum Woodland of frequently flooded floodplains mainly in the Darling Riverine Plains Bioregion” (**PCT 39**). PCT 39 is a component of a listed endangered ecological community under the BC Act and the repealed *Threatened Species Conservation Act 1995* named as “Coolibah – Blackbox Woodland in the Darling Riverine Plains, Brigalow Belt South, Cobar Penplain and Mulga Lands Bioregion”.

The areas subject to this Order are not the same as the Areas of interest identified in **Attachment A**. The area subject to remediation in this Order is 427 hectares and is depicted on the maps at **Attachment B** (the **Remediation Areas**).

This Order revokes the Order C0003889 (DOC19/552318) issued to [REDACTED]
[REDACTED] on 28 June 2019.

Opinion

I, [REDACTED], Senior Team Leader, Compliance and Regulation – North West, am satisfied that native vegetation has been damaged in or as a result of the commission of an offence against section 12 of the NV Act.

Order

I, [REDACTED], Senior Team Leader, Compliance and Regulation – North West, hold delegated authority on behalf of the Environment Agency Head for the purposes of section 11.15 of the BC Act and hereby order - [REDACTED] (the **Remediator**) to carry out the following remediation work 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.

Requirements

1. Remediation Area

- 1.1. In this Order, **Remediation Area** means the areas marked “Remediation Area” on **Attachment B**.
- 1.2. This Order requires the Remediator to inform the Environment Agency Head of any change in the ownership or occupancy of the land concerned at least 21 days prior to any such change occurring.

2. Duration

- 2.1. This Order will be in force for 20 years; unless varied or revoked in accordance with the BC Act.

3. Remediation work

Soil disturbance

- 3.1. Soil disturbance in the Remediation Areas is prohibited, except in accordance with written approval from the Department.

Remediation

- 3.2. Native vegetation is to be allowed to regenerate in the Remediation Areas as the priority method of remediation. To protect regenerating vegetation and fauna habitat the following activities are prohibited within the Remediation Areas:
 - Clearing of native vegetation – except in accordance with a voluntary code compliant certificate issued for **Low impact clearing of invasive native species**.
 - Disturbance of native vegetation – except as a requirement of this Order or with written approval from the Department.
 - Removal of fallen timber.
 - Cultivation.
 - Construction of infrastructure.
 - Aerial spraying.

Invasive native species management

- 3.3. An application may be made to Local Land Services for **Low impact clearing of invasive native species** within the Remediation Areas.

Weed management

- 3.4. The Remediator must implement measures to ensure weed species do not have a significant impact on the **biodiversity values** of the Remediation Areas. Implementation of these measures must be commenced within 60 days of the issue of this Order.
- 3.5. Without limiting this clause, the Remediator must ensure that weeds occupy less than 5% of total groundcover of the Remediation Areas. Control measures permitted include:
 - Spot application of herbicide.
 - Manual removal.
 - Biological control.

Livestock

- 3.6. The Remediator must implement measures to keep the Remediation Areas free of stock, except in accordance with a *sustainable grazing regime* approved by the Department.

Pest animals

- 3.7. The Remediator must implement measures to reduce the density of pest animals to a level that is not having a significant impact on the biodiversity values of the Remediation Areas and maintain densities at or below that level using any approved means.
- 3.8. Implementation of these measures must be commenced within 30 days of the issue of this Order.

Fire

- 3.9. The Remediator must implement measures to prevent fire occurring within the Remediation Areas and to suppress and extinguish any fire that does occur. Implementation of these measures must be within 30 days of the issue of this Order.

Fencing

- 3.10. Fences are to be maintained to ensure the exclusion of stock from the Remediation Area.
- 3.11. If the Remediator wishes to continue grazing rights within the land outside the Remediation Area, the boundaries of the defined Remediation Area must be fenced to a standard that excludes stock.
- 3.12. Within 30 days of this Order the Remediator must erect signage so that any person entering the Remediation Area is aware and does not use the land in a manner that would contradict this Order.

Access

- 3.13. The Remediator must provide reasonable access to staff of the Department for the purposes of administering this Order.
- 3.14. The Department must provide reasonable notice of an intention to inspect the Remediation Areas.

Hazards, chemicals and waste

- 3.15. The use of insecticides, herbicides and soil ameliorants is not permitted on the Remediation Areas except as approved in writing by the Department.
- 3.16. Waste is not to be placed, stored or kept in the Remediation Areas.
- 3.17. All staff, contractors and other visitors entering the Remediation Areas are to be made aware of this Order and instructed to comply with its requirements.

Costs

- 3.18. The Remediator must bear all costs associated with implementing the conditions of this Order.

4. Inspections and reporting

Inspections

- 4.1. The Remediator is to inspect the Remediation Areas twice each year, with a minimum of 150 days between each inspection for the purposes of determining the percentage of ground cover that is comprised of exotic flora and priority weeds.
- 4.2. In the Remediation Areas, there are eight monitoring points located at the GPS co-ordinates given in **Table 1** and mapped at **Attachment B**. The co-ordinates given must be permanently marked to ensure the location is the same each monitoring period.

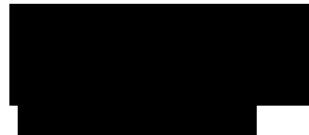
Table 1: Location of monitoring points

Monitoring Point	Latitude	Longitude	Easting	Northing
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

- 4.3. The following records must be made by the Remediator for all inspections:
 - The date(s) on which the inspection was undertaken.
 - The name of the person who undertook the inspection.
 - Photographs to the north, east, south and west at each monitoring point.
 - Observations made during the inspection.
 - Details of any work required within the Remediation Area.
 - The proposed date(s) of that work.
- 4.4. All records required to be kept by this Order must be:
 - Accurate.
 - In a legible form.
 - Kept for the duration of this Order.
 - Must be provided to the Department annually.

Reporting

- 4.5. Initial Works Report - the Remediator must prepare and submit an Initial Works Report to the Department within six weeks of the date of issue of this Order. This report must contain:
- Confirmation of the exclusion of stock and dates of any actions taken to remove stock.
 - The percentage of ground cover that is comprised of exotic plants and priority weeds.
 - An assessment of pest animal presence within the Remediation Area.
 - Advice of any completed, required, or proposed work within the Remediation Area.
- 4.6. Annual Monitoring Report - the Remediator must prepare and submit a Monitoring Report to the Department within twelve (12) months of the date of issue of this Order and annually thereafter while the Order remains in force. The Monitoring Report must contain the records (see clause 4.3) made for all inspections.
- 4.7. Reports may be submitted to the Department by:
- By mail, courier or hand to:
Senior Team Leader
Compliance and Regulation - North West
Level 1
48-52 Wingewarra Street,
Dubbo NSW 2830
OR
 - By email to:
ROG.North@environment.nsw.gov.au
Marked to the attention of the Senior Team Leader Compliance and Regulation.



Senior Team Leader
Compliance and Regulation
Biodiversity and Conservation North West

(by Delegation)

Definitions

In this Order, the following definitions apply:

Term	Definition
Areas of interest	Areas where native vegetation was cleared in contravention of section 12 of the <i>Native Vegetation Act 2003</i>
BC Act	<i>Biodiversity Conservation Act 2016</i>
BC (S&T) Regulation	<i>Biodiversity Conservation (Savings and Transitional) Regulation 2017</i>
Clearing	Has the same meaning as defined in section 7 of the <i>Native Vegetation Act 2003</i>
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
Endangered Ecological Community	Has the same meaning as defined in the <i>Biodiversity Conservation Act 2016</i>
Exotic flora	Plant species that are not "native vegetation" as defined in section 6 of the <i>Native Vegetation Act 2003</i>
Low impact clearing of invasive native species	Has the same meaning as defined in Part 2 Division 1 of the <i>Land Management (Native Vegetation) Code 2018</i>
Native vegetation	Has the same meaning as defined in the <i>Native Vegetation Act 2003</i>
NPW Act	<i>National Parks and Wildlife Act 1974</i>
NV Act	<i>Native Vegetation Act 2003</i>
Order	This document – a Remediation Order issued under section 11.15 of the <i>Biodiversity Conservation Act 2016</i>
PCT	Plant Community Type
PCT 39	Coolibah – River Coolibah – Lignum Woodland of frequently flooded floodplains mainly in the Darling Riverine Plains Bioregion
Pest animals	Includes feral cats, wild dogs, feral pigs, feral goats, feral deer, foxes, hares, rabbits, and other exotic animal species but does not include livestock or native wildlife
Priority weed	Means a plant that is a pest as defined by section 15 of the <i>Biosecurity Act 2015</i> - list available at: http://weeds.dpi.nsw.gov.au/
Property	[REDACTED]
Remediation Area	The areas located on the Property shown schematically on the map in Attachment B outlined in red and marked "Remediation Area"
Remediator	[REDACTED]
Stock	Means all livestock (including, but not limited to, cattle, horses, sheep, alpacas, domesticated pigs and domesticated goats); it does not include native wildlife
Sustainable grazing	Sustainable grazing is grazing by livestock, and the management of grasslands used for grazing, that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation
Waste	Has the same meaning as defined in the <i>Protection of the Environment Operations Act 1997</i>

Warning and information this Order

Why we serve remediation orders: Pursuant to section 11.15 of the BC Act, if the Environment Agency Head or delegate 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 the NV 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.

A Remediation Order may 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.

What you are required to do: The work required by this remediation order provides 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. 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.

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.

If you fail to comply with this Order the Environment Agency Head or their 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).

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>.

Under section 11.15(4) of the BC Act this Order may be varied or revoked by a further order.

Attachments:

- A. Map of the 'Areas of interest'
- B. Maps of the 'Remediation Areas'

Remediation Order




0 0.5 1 1.5 2 km

Attachment A
Areas of interest

Scale 1 : 25 000
GDA94 NSW Lambert

Map prepared by [redacted] on 25/08/2020
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This map is not guaranteed to be free from error or omission.
The Department and its employees disclaim liability for any act done on the information in the map and any consequences of such acts or omissions.

 Areas of interest (423 ha)

 [redacted] [redacted]

ADS40 - [redacted]



- Monitoring Points
- Remediation Areas (336 ha)
- ADS40 - [redacted]

**Attachment B.1
Remediation Areas**

Scale 1 : 25 000
GDA94 NSW Lambert

Map prepared by [redacted] on 25/08/2020
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- Monitoring Points
- Remediation Areas (91 ha)
- ▭ ADS40 - [Redacted]

**Attachment B.2
Remediation Areas**

Scale 1 : 25 000
GDA94 NSW Lambert

Map prepared by [Redacted] on 25/08/2020
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Sustainable Grazing Regime

Dated: 22/10/2020

Property:

[REDACTED]
[REDACTED]

Property Owner

[REDACTED]

Background

- I. [REDACTED] is the registered owner of the rural property known as [REDACTED] situated at [REDACTED] ("the property").
- II. The property consists of approximately 325.9 hectares and has traditionally been run as a grazing enterprise on native pastures.
- III. The property is now subject to a Remediation Order which has been imposed over the property by the NSW Government, Department of Planning, Industry and Environment, ("DPIE") dated 1 September 2020 and having Reference DOC19/552318-2 ("the Remediation Order").
- IV. [REDACTED] and DPIE are hereinafter collectively referred to as "the parties".
- V. The Remediation Order is for a duration of 20 years and is due to conclude on or about 1 September 2040.
- VI. It is a condition of the Remediation Order (clause 3.6) that if [REDACTED] wishes to graze livestock on the property that he must keep the property free of stock, except in accordance with a sustainable grazing regime approved by the Department.
- VII. [REDACTED] wishes to continue to graze property on the property.
- VIII. In accordance with clause 3.6, the parties hereby agree to the following as the approved sustainable grazing regime on the property.

Agreed Definitions

Term	Definition
<i>Grazing</i>	The method of animal husbandry whereby domestic livestock spend time in an area of pasture in order to consume pasture with the intention of weight gain.
<i>Grazing duration</i>	The time livestock spend grazing a paddock.
<i>Grazing intensity</i>	The combination of stocking rate and grazing period.
<i>Rest periods</i>	The time in a rotational grazing system when the stock are not in the paddock, so the pasture can re-grow before the next grazing.
<i>Grazing interval</i>	See <i>Rest Period</i>
<i>Pasture utilisation</i>	The total amount of pasture dry matter (DM) that is harvested and consumed through direct grazing.
<i>Rotational grazing</i>	<p>Livestock are moved to a 'new' pasture paddock regularly, based on one of three factors:</p> <p><i>Time based</i> - livestock are moved using fixed time intervals. For example, with a four-paddock system, stock might spend two weeks in each paddock, giving a six-week rest period.</p> <p><i>Plant growth based</i> - livestock are moved using plant growth criteria (feed on offer, pasture re-growth phase, or leaf stage).</p> <p><i>Animal intake based</i> - animal intake criteria such as weight gain dictates the movement of livestock.</p>
<i>Set stocking (or continuous grazing)</i>	<p>Stock are run in one paddock year round and the pasture receives no rest.</p> <p>Stocking rate is set to match paddock pasture production over the whole year, but can be increased or decreased in response to changes in forage availability.</p>
<i>Stocking rate</i>	<p>The number of livestock carried per hectare.</p> <p>Stocking rate is usually calculated over a full year, and expressed in dry sheep equivalents (DSE) per hectare per year.</p> <p><i>Stock density</i> is usually calculated over a shorter time period and can be expressed as DSEs or animal class/ha/week.</p>
<i>Tactical grazing</i>	The practice of using a range of grazing methods through a single year, or series of years, to meet different animal and pasture objectives at different times.

Objectives

A. This sustainable grazing regime will;

- i. Ultimately assist in maintaining native plant species on the property by encouraging species to increase in abundance and distribution across the property throughout the duration of the Remediation Order.
- ii. Maintain and improve the vegetation condition over the duration of the Remediation Order.
- iii. Make allowance for native grass species to complete their reproductive cycle.
- iv. Maintain a healthy condition threshold for native grass and pasture species of not less than 50% groundcover.
- v. Make appropriate allowances for shifting environmental conditions, flood, drought and occasionally exceptional pastures.
- vi. Set a 40% utilisation level for native groundcover species.
- vii. Enable [REDACTED] to strategically and sustainably graze livestock on the property.

Operative Provisions

Should livestock be grazed on the property the following requirements must be observed by [REDACTED]

1. Strategic Rest Period

Livestock will not be grazed on the property during the summer months of December, January and February in standard or poor seasons. During the summer strategic rest period native species will be given the opportunity to recover and complete their reproductive cycle.

In the event of higher than average spring or summer rain [REDACTED] may approach DPIE and make application to vary the strategic rest period provided that such variance does not impact the native species ability to recover and complete their usual reproductive cycle.

2. Native Species Groundcover Healthy Condition Threshold

At all times native groundcover must not be permitted to be less than 50%. If at any time the groundcover benchmark drops below 50% then [REDACTED] must ensure that livestock are removed from the area in order to allow the maintenance and regeneration of native species to above the healthy condition threshold of 50%.

Grazing must not occur when the healthy condition threshold is less than 50%.

3. Pasture Utilisation level requirements

At all times utilisation levels of native grasses must remain at or below 40%. Grazing must not occur when the utilisation level increases above 40%.

To determine the utilisation level [REDACTED] will;

- a. Choose a typical area within the property (that areas shall not have been either over or under grazed but rather will be representative of the groundcover present on the property).
- b. Estimate the utilisation of native grass species by comparing individual plants with Annexure A and thereafter calculate the average utilisation.

4. Stocking rate

This sustainable grazing regime is deliberately non prescriptive regarding a stocking rate. Rather the regime is focused on the timing of the grazing, the rest periods and the regimes objectives.

5. Permitted grazing periods

The Remediation area must not be continuously grazed but shall only be grazed on a time based rotational basis. The time based rotational basis during average seasons shall be as follows;

- a. The Strategic rest period over the summer months shall be observed.
- b. For each 30 days of grazing on an area within the Remediation Order (the grazed area), the grazed area shall be rested for an additional 30 days (the rest period).

If during times of high rainfall or otherwise favourable conditions [REDACTED] may, if he so wishes, make application to DPIE to temporarily vary this grazing period requirement by way of a short term tactical grazing arrangement.

6. Grazing during times of drought

Grazing during times of drought should be avoided if such grazing will reduce native ground cover vegetation significantly. During times of prolonged dry and/or drought [REDACTED] must undertake an early reduction in grazing pressure within the Remediation Area.

Livestock must be removed from within the Remediation Area if native ground cover falls below the healthy condition threshold of 50%. Should this occur livestock must not be reintroduced to the Remediation Area until native ground cover meets or exceeds the healthy condition threshold and during a permitted grazing period.

4. Grazing following bushfire

Following fire, livestock should be excluded, where practicable, from burnt areas until the ground cover has returned to the healthy condition threshold of 50%.

5. Opportunity to review

If after 5 years [REDACTED] wishes to have this strategic grazing regime reviewed, he may make a submission to DPIE (or the appropriate Government Department at that time) to seek agreement to vary the terms of this strategic grazing regime.

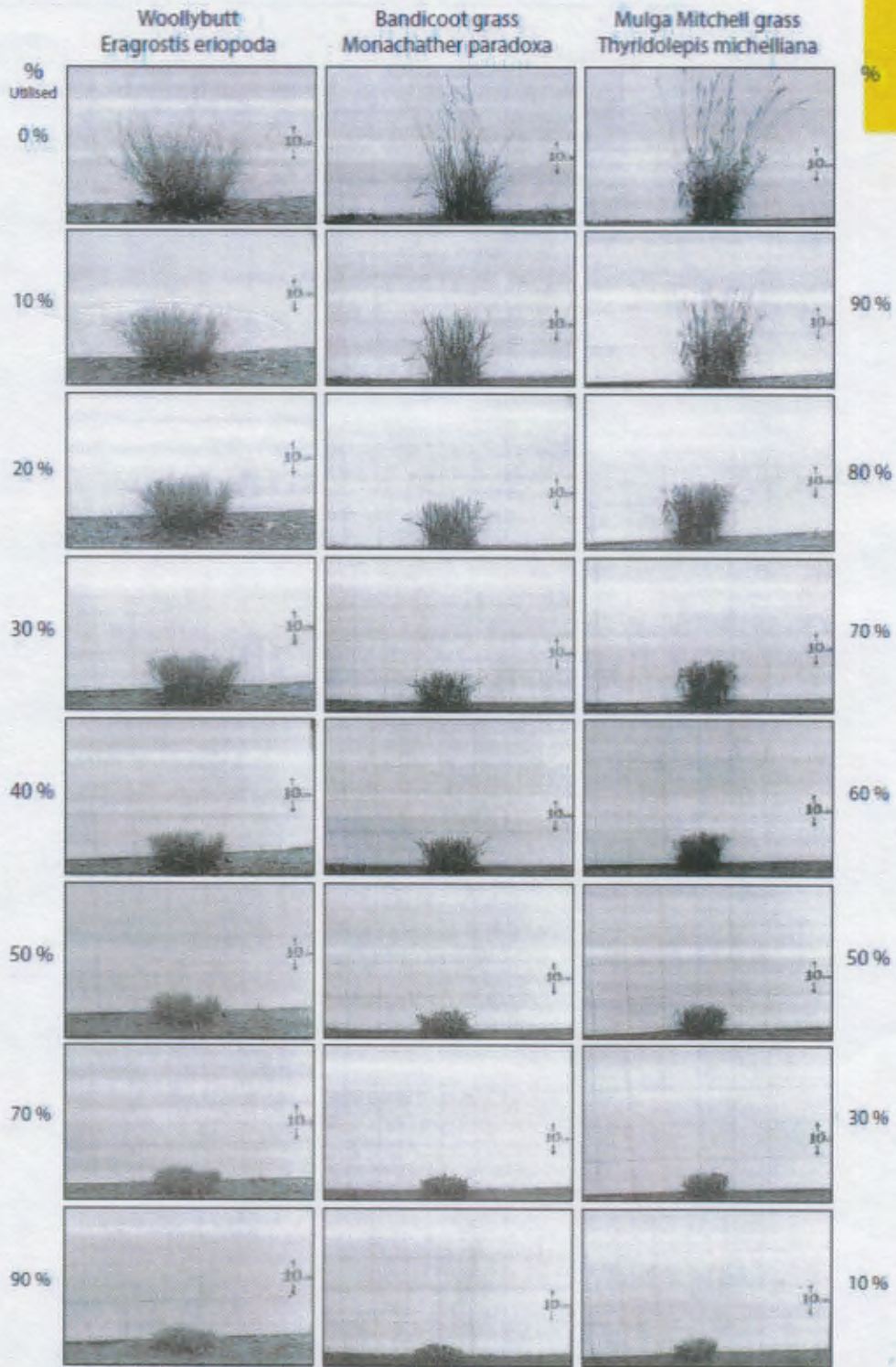
Signed:

[REDACTED]
[REDACTED]

[REDACTED] 26/10/2020
on behalf of and for DPIE
[REDACTED]
Senior Team Leader
Compliance & Regulation North West
Biodiversity & Conservation

Annexure A

Utilisation Level Photo Standards



(Source: Anderson et al. 1994)