Notice

Environmental Protection Act 1994

Direction Notice

This direction notice is issued by an authorised person pursuant to section 363B of the Environmental Protection Act 1994.

Fitzroy (CQ) Pty Ltd (ACN 103 902 389)
Level 20, 324 Queen Street
BRISBANE QLD 4000

Our reference: C-CPLPO-100294026; STAT-E-100294027

4 October 2022

Take notice: that under the *Environmental Protection Act 1994* (the Act) a direction notice is issued to Fitzroy (CQ) Pty Ltd (ACN 103 902 389) (you) by an authorised person under section 363B of the Act. The direction notice is issued with respect to your activities at the Broadlea North Coal Mine on land described as mining leases (MLs) ML70345 and ML70338 (the premises).

A. Grounds

The direction notice is issued on the grounds that the authorised person believes that:

1. You have contravened a prescribed provision, being section 426 of the Act which states: "A person must not carry out an environmentally relevant activity (ERA) unless the person holds, or is acting under, an environmental authority (EA) for the activity"; and
2. It is likely the contravention of section 426 will continue if no action is taken to remedy the matter; and
3. Cessation of the unauthorised ERA would in part remedy the contravention of the prescribed provision (section 426 of the Act); and
4. The matter relating to the contravention can be remedied and it is appropriate to give you an opportunity to remedy the matter.

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The facts and circumstances forming the basis for these grounds are:

1. Fitzroy (CQ) Pty Ltd is the holder of ML70345 and ML70338, the relevant tenures for the resource authority.
2. Environmental authority EPML00340213 (the EA) authorises ERA 13 – Mining black coal and its ancillary ERAs pursuant to Schedule 2A of the *Environmental Protection Regulation 2008* (relevant to the legislation in effect at time of EA) on ML70345 and ML70338.
3. Section 18 of the Act states that an ERA includes a resource activity as defined under section 107, and section 107 of the Act provides that a resource activity is an activity that involves a mining activity.
4. Schedule 2A of the *Environmental Protection Regulation 2008* prescribes ERA 13 – Mining black coal as a resource activity.
5. It is alleged that ERA 13 – Mining black coal (mining activities) has been conducted at the location described as -21.86866,148.17434 (GDA2020) to the north of the N3 Pit on ML70345, which is not authorised by the EA.
6. The department determined the disturbance to have commenced in April 2022.
7. It is alleged that an area of 15 hectares has been cleared of vegetation and the topsoil to an approximate maximum depth of 20 centimetres has removed and stockpile on the edge of the cleared area.
8. On 16 August 2022, departmental officers conducted a site inspection at Broadlea Coal Mine, and confirmed the disturbance was related to mining activity.
9. Of the 15 hectares, 13 hectares is mapped as matters of state environmental significant (MSES) regulated vegetation (category B – endangered or of concern) regional ecosystem (RE) 11.8.5/11.8.11 (60%/40%). RE 11.8.11 is classified as of concern. It is described as *Dichanthium sericeum* (Queensland bluegrass) grassland on Cainozoic igneous rocks. The full RE description can be accessed here: https://apps.des.qld.gov.au/regional-ecosystems/details/?re=11.8.11
10. A search of department records identified that the disturbance has not been subject to any estimated rehabilitation cost or any previous EA applications. The department has not undertaken an impact assessment of the disturbance area, and therefore the area has not been approved by the department within the EA.
11. During communications with Fitzroy (CQ) Pty Ltd they were unable to present evidence that they held approval to conduct ERA 13 – Mining black coal within the disturb area.
12. Under section 426 of the Act, it is an offence for a person to carry out an ERA unless the person holds, or is acting under, an environmental authority for the activity.

B. Steps required

The authorised person considers that the following reasonable steps are necessary to remedy the contravention of section 426 of the Act:

1. You must not recommence disturbance for mine development in the location described as -21.86866,148.17434 (GDA2020) to the north of the N3 Pit on ML70345 (15ha) and shown in Figure 1.
2. You must commence rehabilitation of the unauthorised disturbance area described as 15ha of topsoil stripped and topsoil stockpiled area to the north of N3 Pit and as shown in Figure 1 and take all necessary steps to complete the rehabilitation works in accordance with Table 1 below.
3. Within 20 business days of approval from the department, you must commence the implementation of the rehabilitation plan in accordance with Table 1, Milestone 5.

Table 1: Rehabilitation requirements

Milestone	Completion criteria	Due date
1.Preparation	(a) Cattle excluded from the area and evidence provided to the department that this was completed within the required period	14/09/2022
2.Erosion and sediment control	(a) Interim erosion and sediment control (ESC) measures are installed. (b) Evidence of interim ESC measures being installed provided to the department.	19/09/2022
	(c) ESC measures are installed in accordance with the direction of an appropriately qualified person. (d) Evidence of ESC measures being installed provided to the department.	17/10/2022
3.Topsoil	(a) Topsoil stockpiled from the cleared area is reinstated across entire area to achieve the pre-clearing landform. (b) Evidence of the completion of the topsoil reinstatement provided to the department.	31/10/2022
4. Weed management plan	(a) Monitoring and management program for weed and non-native species developed and commenced, including established photo monitoring sites, in accordance with the direction of an appropriately qualified person. (b) Evidence of weed and non-native species management program and commencement provided to the department.	3/10/2022
5.Rehabilitation plan development and submission	(a) Rehabilitation plan developed by appropriately qualified person to return the area detailed in Figure 1 to matters of state environmental significant (MSES) regulated vegetation (category B – endangered or of concern) regional ecosystem (RE) 11.8.5/11.8.11 (60%/40%). (b) The rehabilitation plan must include: a. Rehabilitation objectives to achieve the rehabilitation goal for the area; b. Detailed rehabilitation methods to achieve the rehabilitation objectives; c. Final completion criteria that will achieve the rehabilitation goals and objectives; and d. Details of appropriate monitoring and maintenance of rehabilitation. (c) Submission of the rehabilitation plan to department for approval prior to implementation.	31/10/2022

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Definitions:

An **appropriately qualified person** means a person who:

a) holds certification as an environmental practitioner (i.e., Certified Environmental Practitioner (CEnvP) under the CEnvP Scheme), or, has professional qualifications, training, skills, and experience relevant to the nominated subject matter and can give authoritative assessment, advice and analysis on performance relating to the subject matter using the relevant protocols, standards, methods or literature.

Figure 1: Disturbance area



Take notice:

1. This notice remains in force until further notice from an authorised person.

C. Reviews and appeals

The provisions regarding reviews of decisions and appeals are found in sections 519 to 539 of the Act.

A person who is dissatisfied with an original decision made by the Department of Environment and Science (the department) may apply to have that decision internally reviewed.

Information about starting a review or appeal in relation to this notice is contained within the Internal Reviews and Appeals Information Sheet (available at www.qld.gov.au using the publication number ESR /2015/1742 as a search term)

A request for review is to be made using the approved form 'Application for review of original decision' (available at www.qld.gov.au using the publication number ESR/2015/1573 as a search term.

Applications for reviews are to be sent to Permit and Licence Management, Department of Environment and Science: via email at palm@des.qld.gov.au , or by mail to the following address: GPO. Box 2454, Brisbane, QLD, 4001.

Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able to appeal against that decision to the relevant court within 22 business days after receiving notice of the review decision.

A person whose interests are or would be adversely affected by a decision of the department may be able to apply for a statutory order of review under the *Judicial Review Act 1991*.

You may have other legal rights or obligations and should seek your own legal advice.

D. Public Register

Pursuant to section 540 of the EP Act, the Department is required to maintain a register of certain documents and information authorised under the EP Act. A copy of this document will be kept on the public register. The register is available for inspection by members of the public who are able take extracts, or copies of the documents from the register. Documents that are required to be kept on the register are published in their entirety, unless alteration is required by the EP Act. There is no general discretion allowing the Department to withhold documents or information required to be kept on the public register. For more information on the Department's public register, search 'public register' at www.qld.gov.au. For queries about privacy matters please email privacy@des.qld.gov.au or telephone 13 74 68.

E. Penalties

Failing to comply with a direction notice is an offence unless you have a reasonable excuse.

- The maximum penalty for wilfully contravening a direction notice is 1665 penalty units, totalling $239,343.75 for an individual, or $1,196,718.75 for a corporation.
- The maximum penalty for contravening a direction notice is 600 penalty units, totalling $86,250.00 for an individual, or $431,250.00 for a corporation.

Section 3 of the *Penalties and Sentences Regulation 2015* prescribes the monetary value of a penalty unit.

The department may also consider alternative compliance or enforcement action in relation to the offences that are the subject of this notice.

Should you have any queries in relation to the notice, please contact Naomi Camilleri, A/Team Leader on telephone number (07) 4999 6888.



Signature

4/10/2022

Date

Compliance Delivery Manager - Mackay
Department of Environment and Science
Authorised Person
Environmental Protection Act 1994

Enquiries:
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