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.

CAML Resources Pty Ltd
Level 12, 300 Queen Street
BRISBANE CITY QLD 4000

Nippon Steel & Sumitomo Metal Australia Pty Ltd
Level 14, 115 Pitt Street
SYDNEY NSW 2000

Foxleigh Coal Pty Ltd
Level 12, 300 Queen Street
BRISBANE CITY QLD 4000

Our reference: C-CPLPO-100191801/E-100355637

27 January 2023

Take notice: that under the *Environmental Protection Act 1994* (**the Act**) this direction notice is issued to each of CAML Resources Pty Ltd (ACN 080 649 029) (**CAML**), Nippon Steel & Sumitomo Metal Australia Pty Ltd (ACN 001 445 049) (**Nippon**) and Foxleigh Coal Pty Ltd (ACN 125 986 549) (**Foxleigh**) by an authorised person under section 363B of the Act.

The direction notice is issued in relation to the mining activities at the Foxleigh Coal Mine, specifically on mining lease (**ML**) ML70431.

This notice was originally issued on 8 December 2022. New text in this amended notice is shown as underlined and deleted text is shown as strikethrough. The notice issued on 8 December 2022 remained in force until the issue of this amended notice.

A. Grounds

This direction notice is issued on the grounds that:

1. As an authorised person under the Act, I am satisfied on reasonable grounds that CAML, Nippon and Foxleigh have contravened, and continue to contravene a prescribed provision, namely section 426 of the Act which states: "*A person must not carry out an environmentally relevant activity unless the person holds, or is acting under, an environmental authority for the activity*".

Queensland Government

2. Section 18 of the Act states that an environmentally relevant activity (**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.
3. CAML, Nippon and Foxleigh are the holders of environmental authority EPML00744813 (**the EA**), which relates to MLs - ML70171, ML70309, ML70310, ML70429, ML70430, ML70431 and ML70470.
4. The EA authorises, amongst other things, ERA13 – Mining Black Coal.
5. The ERA of Mining Black Coal (ERA 13) has been, and continues to be carried out on ML70431 in areas that are not authorised by the EA, or any other EA (**the Unauthorised ERA**), as depicted by the areas highlighted in blue and labelled "DUMP – 31.3ha", "HAUL ROAD – 2.5ha" and "PIT – 5.6ha" in **Annexure A** to this notice (**the Unauthorised Disturbance Area)**.
6. It is likely the contravention of section 426 of the Act will continue if no action is taken to remedy the matter.
7. Cessation of the Unauthorised ERA being carried out in the Unauthorised Disturbance Area, and either obtaining an environmental authority (**EA**) to authorise the Unauthorised ERA, or rehabilitating the Unauthorised Disturbance Area, would remedy the contravention of the prescribed provision (section 426 of the Act).
8. The matter relating to the contravention can be remedied and it is appropriate to give CAML, Nippon and Foxleigh an opportunity to remedy the matter.

The facts and circumstances forming the bases of these grounds are:

1. CAML, Nippon and Foxleigh are the holders of the EA.
2. CAML is the majority holder of 60% of the following MLs; ML70171, ML70309, ML70310, ML70429, ML70430, ML70431 and ML70470, which it owns together with Nippon and Foxleigh.
3. The EA authorises ERA 13 – Mining Black Coal and ancillary ERAs, namely ERA 31 – Mineral Processing Threshold 2, ERA 8 Chemical Storage Threshold 3, ERA 15 Fuel Burning, ERA 16 Extractive and Screening Activities Threshold 3, ERA 33 Crushing, Milling, Grinding or Screening, ERA 56 Regulated Waste Storage and ERA 60 Waste Disposal Threshold 1.
4. Condition A2 of the EA states:

   "In carrying out the mining activity authorised by this environmental authority, the holder of this environmental authority must comply with Appendix 1 – Figure 1: Approved Foxleigh Mine Activities attached to this environmental authority".
5. *Figure 1: Approved Foxleigh Mine Activities* is **Annexure B** to this notice.
6. The Unauthorised ERA has been conducted, and continues to be conducted, in areas on ML70431 that are not authorised by the EA, as depicted in the Unauthorised Disturbance Area shown in **Annexure A** to this notice.
7. Disturbance in this area was determined by the department to have commenced in September 2019, and this was confirmed by Foxleigh Management Pty Ltd on 27 April 2022 in the pre-enforcement response submitted to the department.
8. On 15 June 2022, departmental officers conducted a site inspection at the Foxleigh Coal Mine and confirmed that the Unauthorised ERA was being carried out in the Unauthorised Disturbance Area; outside the approved disturbance footprint (as per condition A2 of the EA), including in the following areas:

a) One Tree Pit (current mining activity of overburden and coal);

b) One Tree Out of Pit Dump (active dump location);

c) Haul Road;

d) Cockatoo Creek Stage 5 Levee (regulated structure);

e) Cockatoo Creek Stage 5 Diversion;

f) Rehabilitated land including swale drain and 2 sediment retention basins;

g) Cleared land that is planned to be rehabilitated to form drainage systems.

9. On 16 June 2022, the department received correspondence from QMetco Limited confirming that unauthorised disturbance had occurred over 97.2 hectares (**ha**) outside the approved Foxleigh Mine Activities footprint and for which Estimated Rehabilitation Cost (**ERC**) had been decided, in the following areas:

   a) 5.6 ha of One Tree Pit (current mining of overburden and coal);

   b) 31.3 ha One Tree Out of Pit Dump (active dump location);

   c) 2.5 ha Haul Road;

   d) 7.2 ha of Cockatoo Creek Stage 5 Levee (regulated structure);

   e) 14.1 ha of Cockatoo Creek Stage 5 Diversion;

   f) 30 ha of Rehabilitated land including swale drain and 2 sediment retention basins;

   g) 6.5 ha of cleared land that is planned to be rehabilitated to form drainage systems.

10. On 10 June 2021, and again more recently on 9 June 2022, the department decided the application for an ERC decision, that includes rehabilitation liability for the Unauthorised ERA being carried out in the Unauthorised Disturbance Area. In both instances, the Notice advised CAML, Nippon and Foxleigh that the ERC decision is not an approval of the activities detailed in the ERC application.

11. 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 EA for the activity.

12. CAML, Nippon and Foxleigh have unlawfully carried out and continue to carry out the Unauthorised ERA in the Unauthorised Disturbance Area, on ML70431.

13. On 6 December 2022 CAML, Nippon and Foxleigh representatives submitted a request to the department for amendment of Requirement 1 to allow for works to be carried out at One Tree Pit under recommendations contained within a current geotechnical report. A request for extension of Requirement 3 to provide further time for consultants engaged to prepare an EA application was also sort.

14. On 26 January 2023, CAML, Nippon and Foxleigh representatives submitted a request to the department for extension of Requirement 3 to provide further time for consultants engaged to prepare an EA application and conduct further pre lodgement meetings with the department.

B. Steps required

As an authorised person, I consider that the following reasonable steps are necessary to remedy the contravention of section 426 of the Act:

1. Within 14 days, CAML, Nippon and Foxleigh must cease carrying out the Unauthorised ERA in the following areas of the Unauthorised Disturbance Area:

   a) One Tree Pit (current mining of overburden and coal);

   b) One Tree Out of Pit Dump (active dump location); and

   c) the Haul Road;

   which are outside the authorised area of disturbance shown in *Figure 1: Approved Foxleigh Mine Activities* (**Annexure B** to this notice) unless, and until CAML, Nippon and Foxleigh hold, or are acting under, an EA for ERA 13.

   This requirement does not apply to any works carried out in accordance with the recommendations contained in the current geotechnical report prepared by Cartledge Mining and Geotechnics.

2. CAML, Nippon and Foxleigh must notify the department in writing within 24 hours of ceasing the Unauthorised ERA in accordance with requirement 1.

3. By **4pm on ~~30 January~~ 24 February 2023** CAML, Nippon and Foxleigh must:

   a. commence rehabilitation of the Unauthorised Disturbance Area in accordance with Table 1 and complete the rehabilitation within 12 months; or alternatively

   b. lodge with the department a properly made amendment application for an EA for the Unauthorised ERA in the Unauthorised Disturbance Area; and

   c. do all things necessary to progress the application; and

   d. if the application is refused, commence rehabilitation of the Unauthorised Disturbance Area in accordance with Table 1, and complete the rehabilitation within 12 months.

Table 1: Rehabilitation requirements

Milestone	Completion Criteria	Timeframe
Remediation of contaminated land	a. Contaminated land investigations have been carried out; b. Any contaminated water (e.g. affected by hydrocarbons) has been treated on site or removed; c. Any contaminated materials have been appropriately removed and disposed of; d. On-site remediation of hydrocarbon-contaminated soils has been completed; and e. Completion of validation testing to confirm that contaminated soils have been removed/remediated.	Within 12 months of requirement 3(a) or 3(d) commencing
Landform development and reshaping/reprofiling	a. Bulk earthworks to achieve pre-clearing landform and slopes have been completed; b. Completion of subsoils placement over waste rock; c. Completion of reshaping to achieve pre-disturbance landform. General reshaping to achieve pre- clearing landform has been completed; d. Installation of erosion and sediment control systems; e. The final landform surveyed and certified by a suitably qualified person as per construction designs; and f. The backfilled pit has been certified as geotechnically stable by a suitably qualified person.	
Surface preparation	a. Remediation of any erosion has been completed; b. Growth media (topsoil) has been sourced, carted and spread; c. Ameliorants to improve or stabilise soils have been added; and d. Deep ripping has been undertaken.	
Revegetation to achieve re-establishment of regional ecosystem 11.4.8 – *Eucalyptus cambegeana* woodland (Blackbutt) to open forest with *Acacia harpophylla* (Brigalow) on Cainozoic clay plains on less than 10% slope.	a. Direct seeding completed; b. Fertiliser has been applied; c. Tube stock planted; and . d. A monitoring program developed and commenced.	

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 a person has a reasonable excuse.

- The maximum penalty for wilfully contravening a direction notice is 1,665 penalty units, totalling $1,196,718.75 for a corporation.
- The maximum penalty for an individual contravening a direction notice is 600 penalty units, totalling $86,250 for an individual and $431,250 for a corporation.

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

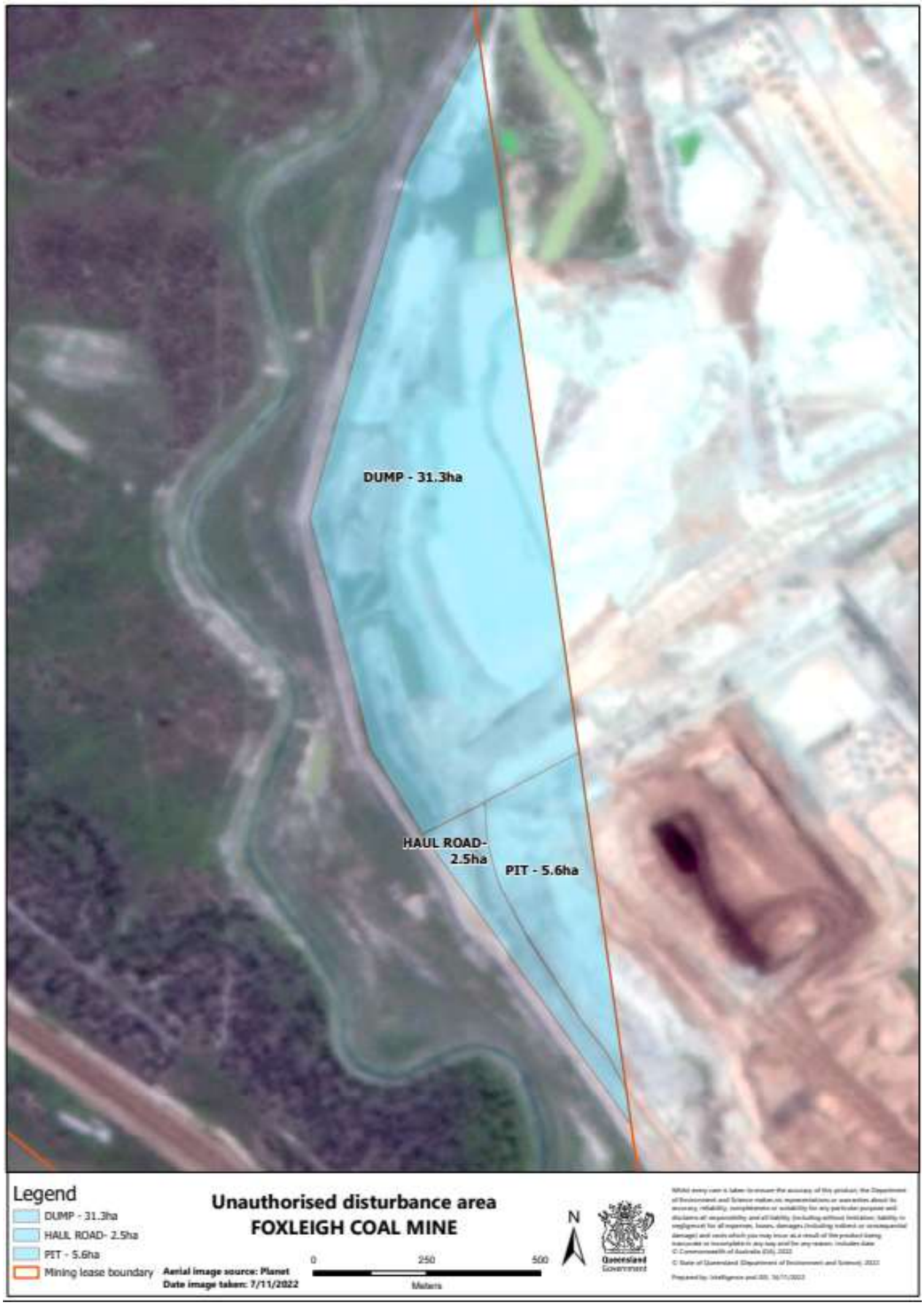
The department may also consider alternative compliance or enforcement action in relation to the offences that are the subject of this notice.

Should you have any queries in relation to the notice, please contact Louise Pinn, Compliance Delivery Manager on telephone number (07) 48373 499

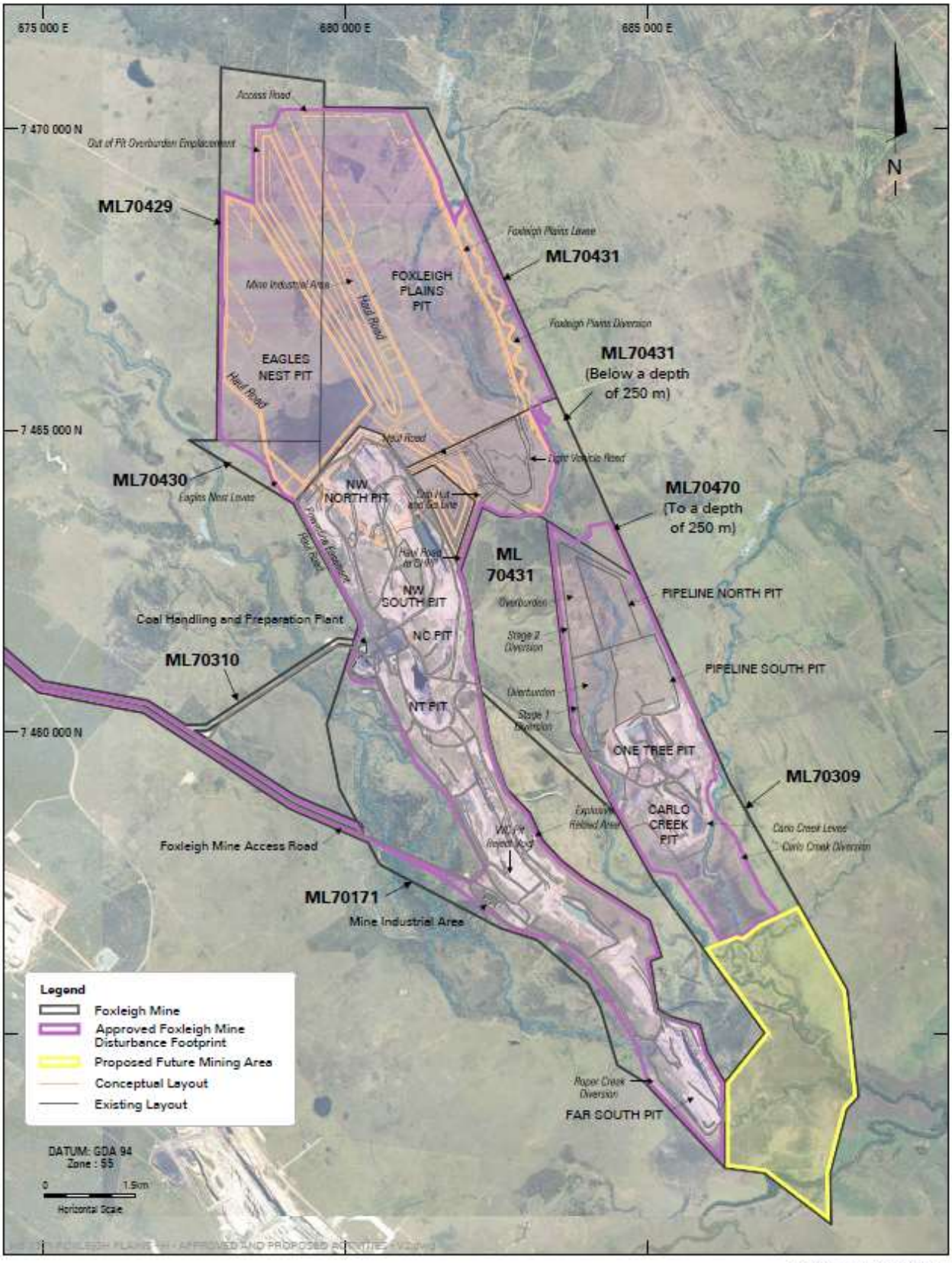
	27/01/2023
Signature	Date

Alisha Stewart
Department of Environment and Science
Authorised Person
Environmental Protection Act 1994

Annexure A - Unauthorised Disturbance Area



Annexure B - Figure 1: Approved Foxleigh Mine Activities



FOXLEIGH MINE

Approved Foxleigh Mine Activities