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.

NuGrow Bundaberg Pty Ltd (ACN 617 665 228)
Level 10, 1 Eagle Street,
Brisbane, QLD, 4000

Email: HarryGordon@nugrow.com.au

Peterthompson@nugrow.com.au

Our reference: C-CPLPO-100388081/ E-100388085

Dear Sir

Take notice: that under the *Environmental Protection Act 1994* (the Act) a direction notice is issued to NuGrow Bundaberg Pty Ltd (you) by an authorised person under section 363B of the Act. The direction notice is issued to you with respect to your activities on land described as Lot 4 on SP275605 (the adjoining land) located on Tardas Rd, Gregory River, Queensland 4660.

An oral direction was provided by an authorised person to a NuGrow Bundaberg Pty Ltd representative (Harry Gordon) on **03 March 2023 at 2:40pm** via a telephone conversation. This Direction Notice confirms the oral direction provided at that time.

A. Grounds

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

- you are contravening 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
- it is likely the contraventions of sections 426 will continue or be repeated; and
- the matters relating to the contraventions can be remedied and it is appropriate to give you an opportunity to remedy the matters. ‘Remedy’ includes cleaning up, fixing or rectifying any environmental harm (including nuisance) resulting from contravening the prescribed provisions.

Queensland Government

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

1. NuGrow Bundaberg Pty Ltd (you) are authorised under EA EPPR00666413 to conduct ERA 53 Organic Material Processing on Lot 3 on SP275605, located on Tardas Rd, Gregory River, Queensland, 4660 (the premises).
2. The *Environmental Protection Regulation 2019* defines ERA 53 Organic Material Processing as operating a **facility** for processing, by way of composting or anaerobic digestion, more than 200t of organic material in a year (the activity).
3. In accordance with the *Environmental Protection Regulation 2019* a **facility**, for an ERA, means, generally, the premises or other place used for the activity.
4. ERA 53 Organic Material Processing includes the handling and management of leachate generated by the activity.
5. Leachate is defined as water, carrying impurities which has percolated through the earth, a rubbish tip, mine waste, etc.; liquid sullage. *Reference- Online Macquarie Dictionary, accessed on 3 March 2023.*
6. In accordance with EA EPPR00666413 leachate means a liquid that has passed through or emerged from or is likely to have passed through or emerged from, a material stored, processed or disposed of at the site that contains soluble, suspended or miscible contaminants likely to have been derived from the said material.
7. EA EPPR00666413 does not authorise the release of leachate to the environment.
8. You are the registered owner of Lot 4 on SP275605 located on Tardas Rd, Gregory River Queensland, 4660 (the adjoining land).
9. On 02 March 2023 authorised persons from the Department of Environment and Science (department) inspected the premises.
10. During the inspection, authorised persons observed the leachate dam (reference Figure 1 – site layout) being dewatered with a pump connected to a lay flat hose leaving the premises.
11. NuGrow Bundaberg Pty Ltd advised authorised persons that water from the leachate dam was being pumped and released to the adjoining land.
12. The release of leachate via a lay flat hose onto the adjoining land is an extension of the facility and the operation of the ERA onto the adjoining land.
13. Under section 426 of the Act, a person must not carry out an ERA unless the person holds, or is acting under, an EA for the activity.
14. A search of the department's electronic databases indicates that you do not hold an EA to lawfully conduct ERA 53 on the adjoining land.
15. On balance of probability, the department believes that you have carried out and are likely to continue to carry out (e.g in the event of further rainfall) ERA 53 without holding or acting under an EA.
16. The department considers it reasonable to require you to cease conducting ERA 53 on the adjoining land, until you hold or are acting under an EA for the ERA on Lot 4 SP275605.

B. Reasonable Steps

The authorised person considers that the following reasonable steps are necessary to remedy the contravention of the prescribed provision:

1. **By 5pm Friday 03 March 2023**, you must stop conducting the ERA 53 (including discharging of leachate) on the adjoining land; and

2. You must not recommence the ERA on the adjoining land or other land that is not authorised under EA EPPR00666413 until you hold or are acting under an EA that authorises the ERA activity.

Take notice:

- The requirements of the direction notice took effect immediately upon the service of the oral direction on 03 March 2023.
- This notice remains in force until further notice from the department.

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 initiating an 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 or appeal 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 request a statement of reasons for a decision or a statutory order 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

It is important that you know the impact to you personally as an individual or as a corporation for not meeting your obligations.

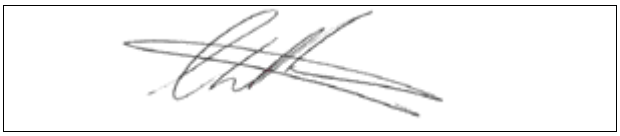
Under section 363E of the Act, is an offence to fail to comply with a Direction Notice unless the person has a reasonable excuse.

- The maximum penalty for wilfully contravening a direction notice is 1,665 penalty units, totalling $239,343.75 for a person or $1,196,718.75 for a corporation.
- The maximum penalty for contravening a direction notice for a corporation is 600 penalty units, totalling $86,250 for a person or $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 Dan Cohen, Principal Environmental Officer on telephone number 07 4302 8589.



Signature

06/03/2023

Date

Cate Puschmann
Compliance Delivery Manager
Department of Environment and Science
Environmental Protection Act 1994

Enquiries: Dan Cohen
Compliance Centre: Maryborough
Mail: PO Box 145 MARYBOROUGH QLD 4650
Email: widebay.esr@des.qld.gov.au
Telephone: 07 4302 8589

Figure 1 – Site layout

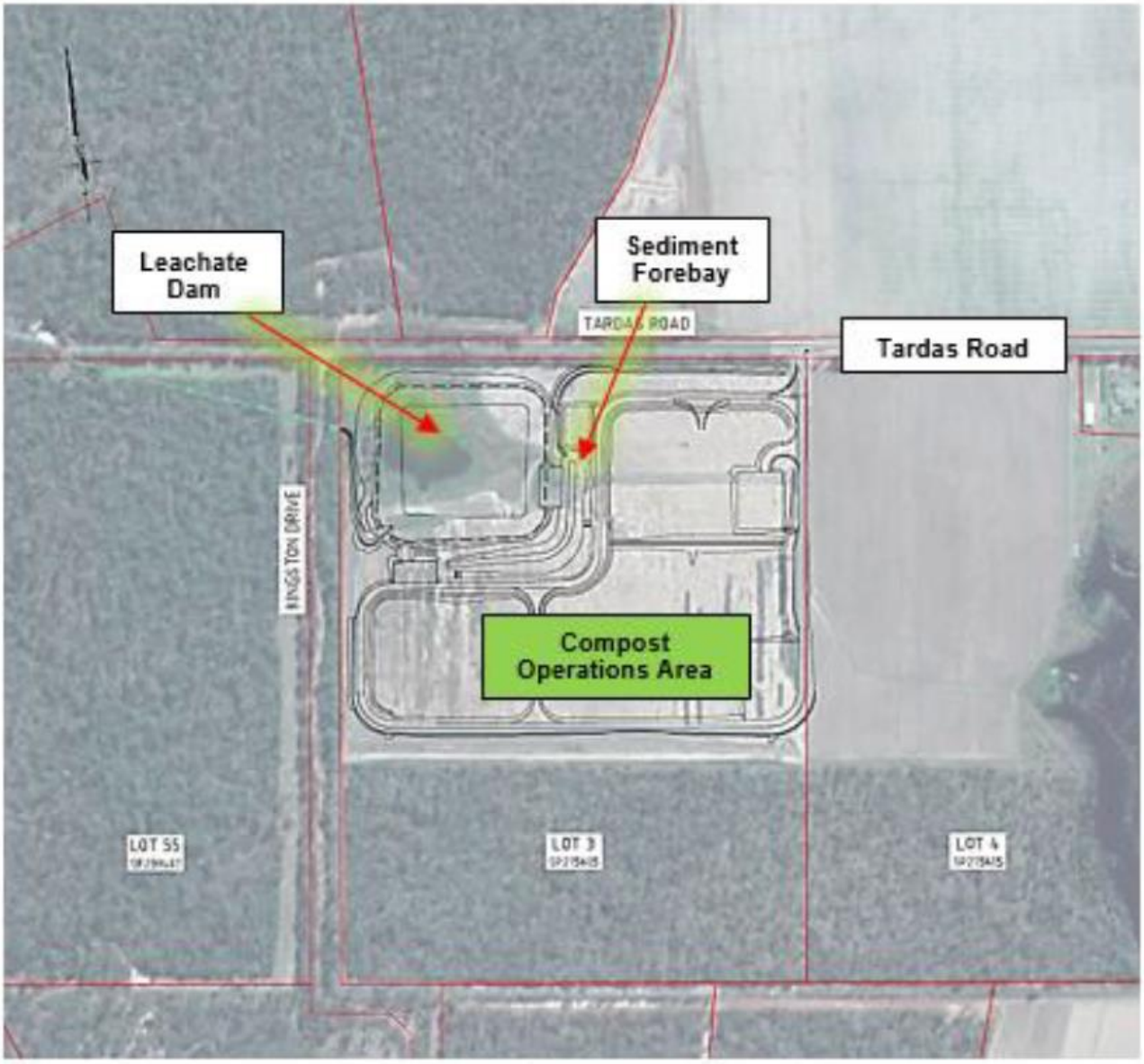


Figure 1 obtained from *NuGrow Bundaberg Pty Ltd, Leachate Dam – Detailed Design Report,* January 2019, prepared by Energy Water Management, Reference M7209_001.